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Pet. No. _____

SUPREME COURT OF THE UNITED STATES

October Term 1982

JAMES M. PICCOLO, Petitioner,

v.

UNITED STATES OF AMERICA, Respondent.

On Petition for Writ of Certiorari to the
District of Columbia Court of Appeals

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Whether in an affidavit for a search warrant, the omission of material facts regarding an informant's liability plus the inclusion of statements directly contrary to those facts, such that the affidavit viewed as a whole was misleading and false, constitutes intentional or reckless falsity within the test of Franks v. Delaware, where the affiant includes no statements that would enable the Magistrate to resolve this contradictory information.

2. Whether, under Franks v. Delaware, a court may re-examine an excised affidavit and draw inferences of an informant's reliability from the remainder, where the true facts known and omitted by the affiant directly contradict those inferences.

3. Whether a defendant, under Franks v. Delaware, must make a "substantial initial

showing" where the officer-affiant admits at trial that he both failed to include material facts regarding his informant's reliability in the affidavit, and included statements directly contrary to those omitted facts.

LISTING OF PARTIES

The Petitioner is James M. Piccolo of 934 7th Street, N.W., Washington, D.C. 20004.

The Respondent is the United States Government acting through the United States Attorney in the District of Columbia.

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PETITION FOR A WRIT OF CERTIORARI

The Petitioner, James M. Piccolo, respectfully prays that a writ of certiorari issue to review the judgment and opinion in the District of Columbia Court of Appeals for the District of Columbia on February 26, 1982 from the denial of a Hearing En Banc and the denial of a Petition for Rehearing entered on May 10, 1982.

REFERENCES TO OPINIONS BELOW

The Opinion in this case is in an unreported Opinion in the District of Columbia Court of Appeals rendered on February 26, 1982 which is attached hereto and made a part hereof (App. 1).

JURISDICTION

The judgment of the District of Columbia Court of Appeals was entered on February 26, 1982.

A Petition for Rehearing or Hearing En Banc was timely filed and denied on May 10, 1982.

This Court's jurisdiction is invoked under Title 28 U.S.C. 1254(1).

CONSTITUTIONAL PROVISIONS

The constitutional provisions are the Fourth and Fifth Amendments of the Constitution of the United States.

STATEMENT OF THE CASE

This case arose out of an indictment brought against James M. Piccolo in the Superior Court for the District of Columbia in Criminal No. F4047-78 in which the defendant, Piccolo was indicted on ten counts of receiving stolen property (App. 37). The police began an investigation of the defendant in August of 1977 for allegedly receiving stolen property from one Coyle G. Redman. The investigation had begun as a result of information supplied by one Dale Sutherland from whom the police officer, Sgt. Roger Johnson had never received any information prior to this incident nor did the Sgt. know of his reliability except as to his reliability as to others (App. 45). Sometime subsequent to the commencement of the investigation in August of 1977, after Sgt. Johnson had continued his investigation throughout the month of August, the Sgt. prepared an Affidavit in Support of a

Search Warrant, which his superiors refused to permit him to proceed on (App. 116-117). In the month of September, Sgt. Johnson had prepared a Memorandum to his superiors indicating that he had determined that his informant was unreliable (App. 121). At the trial of this cause in 1979, Sgt. Johnson testified that the reason he had declared Sutherland as unreliable was because Sutherland had continued doing business with Mr. Piccolo. (We parenthetically would like to state that the evidence in the record discloses that Sutherland had never personally done business with Mr. Piccolo but that he had accompanied Redman to the area of the store and had only gone in the store at one time as a messenger boy for Redman.) After September 1977 when Johnson had determined that his informant

was unreliable and that his superiors had refused to grant the issuance of a search warrant, he had terminated or suspended the invesgigation of Piccolo's alleged purchasing any additional stolen property. The investigation lay dormant until some time in April of 1978 at which time a Grand Jury was convened to hear another matter involving Redman/Sutherland and when the investigation now became viable. The investigation continued from April through August of 1978 at which time a Subpoena was issued from the Grand Jury to Mr. Piccolo directing him to bring his books and records to the Grand Jury.

One attempt was made to serve the Subpoena on August 10, 1978 and after such an attempt was made and that the Defendant was not present at his place of business on the date the attempt was made. The police Sgt. sought and procured a

search warrant from the Superior Court of the District of Columbia using the same Affidavit which he had prepared in 1977 in addition to the information furnished in his application for the search warrant (App. 117). As a result of the issuance of the search warrant, a complete and full execution of the search warrant, including seizure of documents and material not covered by the search warrant was conducted under the control of Sgt. Johnson, the police officer. The primary fruits of the search warrant were certain envelopes which indicated certain transactions, some of which were between Mr. Piccolo and Bo (Redman), some of which indicated that they were loans, others which indicated no name of Bo. A preliminary hearing was held on August 22, 1978 at which time the police officer testified that he had no

personal knowledge of the reliability of Dale Sutherland but others had found him reliable. (App. 45(a)).

The fact that Sgt. Johnson had found him unreliable by memo to his superiors was withheld. No mention was made until trial in June, 1979.

At the preliminary hearing the Defendant's counsel sought to ascertain why the search warrant was issued one year after the investigation had begun. The Court, upon objection of the government, refused to permit counsel to proceed. Thereafter, the defendant was indicted on November 14, 1978 by the Grand Jury on ten counts of knowingly receiving stolen property. Timely preliminary motions were filed by the Defendant's which motions were disposed of by the court on February 21 and 22, 1979. One of the Motions to Supress dealt with the staleness of the issuance of the

search warrant. (At this time, the defendant had no knowledge that the police Sgt. had found his informant to be unreliable, learning of this information only at the beginning of the trial when the Jencks material was supplied to counsel. The Court conducted no oral hearing concerning the Motion to Supress but merely found that probable cause had existed. The Defendant had asked for oral hearing to determine the validity of the search warrant, but for some reason the government opposed this hearing and the Court never permitted the Defendant to have an evidentiary hearing concerning the issuance of the search warrant by the Superior Court for the District of Columbia. Trial commenced in the Superior Court for the District of Columbia before the Honorable Leonard Braveman, Judge. The trial ended on June 20, 1979. During the trial when cross-examination of the police officers sought to illicit whether or not

certain information contained in the Statement of the lack of reliability of the informant, the Court stated on two separate occasions that it would not reopen the supression hearing. See transcript (App. 130 and 102). On June 20, 1978, the jury entered a verdict of guilty on counts 6, 8, 12 and 18 of the indictment finding the defendant not guilty of the other charges that remained open after the Court granted motions for acquittal on several of the other counts. A timely Motion for a new trial was filed on June 27, 1979 and on September 10, 1979, the Court denied the Motion and sentenced the defendant to a term of one to five years on each of the three felony count convictions to run concurrently and one year on the misdeanor conviction to be served concurrently with the other sentences.

On September 15, 1979, a timely Notice of Appeal was filed to the District of Columbia

Court of Appeals. On February 26, 1982, the Court of Appeals rendered a Memorandum Opinion and Judgment which is attached hereto as Appendix 1 affirming the convictions. A timely Motion for Hearing En Banc or Reconsideration was filed and denied on May 10, 1982. The Motions were denied. (App. 9).

REASONS FOR ALLOWANCE OF THE WRIT

This Petition for Certiorari rests on the denial by the lower Courts of Petitioner's substantial Fourth Amendment rights in a manner completely contradictory to the decision of this Court in the case of Franks v. Delaware, 438 U.S. 154 (1978).

In that case, this Court settled a matter of Fourth Amendment law that has received varying treatment in the Courts of Appeals; that is, the effect of misrepresentations of fact in an affidavit upon the validity of the search warrant issued pursuant thereto. The holding of this Court sets forth a rule allowing a defendant to challenge the truthfulness of factual statements, where such statements are necessary to the finding of probable cause. In addition, this Court provided that a hearing on this issue be held at defendant's request, once he has made a "substantial preliminary

showing" of both requirements. 438 U.S. at 155-6.

In this case, Petitioner challenges the sufficiency of the affidavit in support of the search warrant on the ground that it failed to set forth sufficient facts necessary to enable the Magistrate to independently assess the informant's reliability, as required under part two of the Aguilar-Spinelli rule (Aguilar v. Texas, 378 U.S. 108 (1964), Spinelli v. United States, 393 U.S. 410 (1969). Specifically, the affiant omitted the fact that he had found the informant to be unreliable; in fact, he affirmatively stated that he was reliable.

Parenthetically, it is of course, no answer to say that Johnson had subsequently found Sutherland to be reliable; if such facts and relied upon, they must certainly be

contained within the affidavit for the Magistrate's consideration.

In applying Franks, the court below held that Petitioner failed the second requirement of the rule. Since the Court concluded that probable cause existed even after discounting the misrepresentation (that is, the informant's reliability was thought to have been demonstrated elsewhere in the affidavit), no hearing on the affidavit's underlying factual basis was required. Alternatively, the court below ruled that Petitioner had failed to make a sufficient initial showing under Franks, and therefore, no hearing was required. App.

Petitioner asserts that to apply Franks to the facts of this case in the mechanical manner of the District of Columbia Court of Appeals produces a result completely at odds

with the spirit and underlying policy of Franks. Primarily, it is the nature of the misrepresentation - a direct contradiction, rather than the usual case of supplemental "facts" added to strengthen a weak affidavit - that makes the result reached below unjust and incorrect.

Three factual differences, and therefore three issues, are presently by this case. First, the application of Franks to a factual misrepresentation in the nature of an omission, where the remaining material is misleading to the Magistrate. Second, the effect of a direct contradiction in the fact of reliability on "residual" material in the affidavit that would, but for the finding of unreliability by the affiant, enable the Magistrate to infer probable cause. Third, the necessity of an initial showing by Petitioner where the affiant has admitted the misrepresentation on the witness

stand.

These issues correspond with the Franks requirements: (1) intentional or reckless misrepresentations, (2) that are material to probable cause, and (3) are demonstrated in a substantial initial showing, followed by a hearing in which because the circumstances make the simple application of Franks impossible, Petitioner suggests that this case presents an important question of federal law that has not been settled by this Court. Furthermore, the resolution of the case by the lower court is in conflict with the underlying principles of the Franks case. For these reasons, amplified below, the Writ should be granted.

> 1. Where the false statement is one directly contrary to the facts known to the affiant, or where the falsity is in the nature of omission, such that the affidavit gives the Magistrate a false impression of the underlying facts, such statements or omissions are intentional or at least reckless falsity for purposes of the Franks rule.

It is undisputed that the Affiant, Detective Sgt. Roger Johnson, misrepresented to the Magistrate the facts concerning the reliability of Dale Sutherland, the informant relied upon in the affidavit. Although stating that Sutherland was a "reliable confidential informant", it was later learned that Johnson found Sutherland to be, in fact, unreliable in September of 1977. Johnson withheld this fact from the Magistrate, and did not state facts in the affidavit showing why he again considered Sutherland reliable in August of 1978.

The mere presentation of the affidavit to the Magistrate was an intentional misrepresentation, or at the very least, a reckless

disregard for the truth, in that the Magistrate was misled by the selective nature of the information contained in the affidavit. All of the information was less than a year old; that is, all of the "facts" and events recited occurred before Detective Johnson's finding of unreliability. The officer's belief as to reliability, while not controlling, certainly is relevant where the belief is of unreliability, and the statement that Sutherland was considered reliable, without more, was an intentionally false and misleading statement.

Furthermore, although the question of the affidavit's staleness, an issue briefed and argued heavily below, is not directly involved here, it is an underlying issue in that the affiant's bold statement of reliability presented to the Magistrate on the date of the warrant's issue was itself over

a year stale. Notwithstanding the cases of Andreson v. Maryland, 427 U.S. 463 (1976) and U.S. v. Brinklow, 560 F.2d 1003 (10th Cir. 1977), Cert. denied, 434 U.S. 1047 (1977), the resulting affidavit was an intentional misrepresentation, designed to give the Magistrate the impression that the reliability information was current. At the least, it was reckless to fail to indicate to the Magistrate the age of the reliability information.

Johnson's omitting from the affidavit his finding Sutherland unreliable must, therefore, be considered an intentional, or at least reckless, falsity, since the resulting affidavit was misleading as a whole to the Magistrate charged with assessing probable cause. Of course, there has been no real challenge to this conclusion - that there was indeed a false statement - by the government or by the court below, and so it is clear that Petitioner meets the first part of the

Franks test.

What we urge as grounds for allowance of the writ, however, is the manner in which an officer can omit vital details (rather than supply additional ones), and succeed in evading not only the Franks dictates, but the staleness doctrine as well.

> 2. The application of part two of the Franks test, examining the remainder of the affidavit for probable cause, is not a workable application where the falsity is one of omission, and where the true facts known to the affiant contradict the mere inferences of the informant's reliability contained in the rest of the affidavit.

Certainly, without a showing of informant's reliability, the affidavit fails the second part of the Aquilar test, and would therefore lack probable cause. But after assuming that there was a false statement, the lower court found that under the Franks test, there remained "other indicia of reliability" in the aff .it after disre-

garding the falsity, therefore probable cause existed and no hearing was required. App.

The "indicia" cited in the opinion were, first, independent observations of the officers in verifying the informant's statements (see Spinelli v. United States, 393 U.S. 410 (1969), and second, the admissions of the informant against his penal interest. We concede that but for the finding of unreliability, these indicia would be sufficient to infer reliability and hence, probable cause. In this case, however, the false statement does not merely supplement the indicia, it directly contradicts them.

Neither of these indicia prove reliability; rather, they allow the Magistrate to merely infer reliability, in the absence of other facts negating reliability, for the purpose of deciding the probable cause issue. No inferential indicia can conclusively show reliability, and any such inference can be overcome by

contrary facts is the affiant-officer's own finding of unreliability.

This is the reason the Franks test of re-examining the remainder of the affidavit fails in this case. Ordinarily, false statements supporting a search warrant consist of additional observations, inferences, other indicia, and the like, and since such statements do not affect other facts contained within the affidavit, those remianing facts may be re-examined under Franks for probable cause despite the misrepresentations and after exising them. But where, as in this case, the falsity directly contradicts the inference (of reliability) drawn from the remainder, those "other indicia" cannot save the affidavit.

In other words, where the officer-affiant has personally found an informant unreliable, it is absurd to blindly con-

clude that because there exist indicia that infer the contrary conclusion, the informant must be reliable.

As an alternative analysis, the falsity can be considered one of omission, and the Franks test fails again because it is impossible to excise an omission in order to re-examine for probable cause.

This case, therefore, presents an issue undecided by this Court, but in need of resolution, since under the facts of this case, the application of a decision of this Court leads to a result contrary to the principles of that decision.

> 3. The "substantial initial showing" required by Franks v. Delaware is satisfied, at least as to the issue of the existence of intentional or reckless falsity, where the officer-affiant admits that he misstated facts, or omitted material facts such that the affidavit was misleading viewed as a whole.

One of the main allegations of error presented to the lower court was the failure to allow any sort of hearing whatsoever on the issue of the underlying factual basis of the affidavit. Consideration of the issue was refused at the preliminary hearing, it was incomplete at the suppression hearing (since counsel for Petitioner was unaware of the false statements), and, even after discovered by counsel at trial, the court three times admonished counsel not to inquire into the issue, and further stated catagorically that the court would not reopen the suppression hearing to permit such inquiry. App. 130 and 102.

The issue presented, therefore, goes to the viability, in a realistic sense, of the Franks rule. Counsel is unlikely to

learn of any falsity in advance of trial (barring prosecutorial generosity), and is therefore caught in the "Catch-22" of being required to make a substantial initial showing of the falsity in order to get a hearing, but needing a hearing to make that initial showing itself. All counsel can do is proffer his knowledge to the court, a method deemed insufficient under Franks.

Certainly the reasons for requiring a particularized showing are strong, as stated in Franks, 438 U.S. 165-167, 171. And the need for the procedural limitations imposed by Franks is clear in situations where counsel for the defendant obtains information from outside sources. But where, as here, the government and its police officers admit the falsity, the need for such safeguards is greatly reduced, to the extent that such an admission by the

government should be sufficient to meet the first test in Franks.

In order to avoid the loss of a defendant's rights under Franks in egregious cases, where it is needed most, this Court should resolve the important issue of sufficiency of the Franks showing where the government has admitted to falsity in the affidavit.

CONCLUSION

The peculiar facts of this case - the nature of the false statements and omissions, as well as their admission by the government - call for a re-examination by this Court of the Franks requirements. This case presents issues undecided by this Court, but which need resolution; otherwise, this and similar cases will be

resolved in a manner totally in conflict with the applicable decisions of this Court.

This Writ should be allowed.

Respectfully submitted,

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DISTRICT OF COLUMBIA
COURT OF APPEALS

DISTRICT OF COLUMBIA COURT OF APPEALS

No. 79-988 FILED FEB. 26, 1982

JAMES M. PICCOLO, Appellant

v. Cr. No. F-4047-'78

UNITED STATES, Appellee.

Appeal from the Superior Court of the
District of Columbia

(Hon. Leonard Braman, Trial Judge)

(Argued December 7, 1981 Decided February 26, 1982)

BEFORE: Kern, Mack and Belson, Associate Judges.

MEMORANDUM OPINION AND JUDGMENT

Appellant was convicted of three felony counts and one misdemeanor count of receiving stolen property in violation of D.C. Code 1973, § 22-2205. Appellant challenges the admission of evidence obtained pursuant to a search warrant. He argues that the trial court erred in refusing to suppress the evidence on the grounds that (1) the information in the affidavit supporting the search warrant was stale, (2) the information establishing probable cause was provided by an unreliable informant, and (3) the affidavit contained false and misleading information. Appellant also asserts as error the trial court's refusal to strike the direct testimony of the informant who improperly invoked his Fifth Amendment privilege against self-incrimination.[1] We affirm.

I

On July 20, 1977, Detective Johnson of the Metropolitan Police Department learned of illegal activity in the District of Columbia involving appellant from Corporal Miles Alban of the Montgomery County Police Department. An informant, had given Alban information about appellant's criminal activities which he in turn relayed to

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1 Appellant asserts several other grounds of error which we find to be without merit.

Detective Johnson. Based upon this information, Detective Johnson contacted the informant, Dale Sutherland, and began an investigation of appellant's activities.

On August 11, 1977, Sutherland contacted Detective Johnson to tell him that an accomplice of his, Coyal Redman, had stolen certain goods and had sold them to appellant. In September 1977, Johnson prepared an affidavit describing the incident but no arrest warrant was sought. During this same time period, Johnson learned of illegal activity involving Sutherland and terminated contact with him.

The investigation was reopened after Redman testified in April 1978 at a grand jury proceeding in another matter that appellant had been a fence for Redman's "boosting" sales.[2] Police interviews with Sutherland, Redman, and employees at appellant's two souvenir stores provided additional evidence of appellant's criminal conduct. A grand jury issued a subpoena for appellant's business records on August 8, 1978.[3] Three days later, following several thwarted attempts to serve the subpoena, Detective Johnson prepared an affidavit in support of a search warrant for the same records.

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2 "Boosting" means professional shoplifting. Redman's extensive criminal record and his addiction to drugs which drove him to boosting were brought out at trial.

3 A grand jury investigating appellant was sworn in on August 4, 1978. It issued a subpoena four days later for the records of both of appellant's stores, Capitol Wholesale Imports, Inc., and East Coast Import-Export, Inc. On November 1, 1978, the grand jury filed with the clerk its formal charges numbering 20 counts.

In the affidavit in support of the application for a warrant, Detective Johnson set forth the history of the investigation, beginning with Alban's contact. Alban had been approached by a "reliable confidential informant" who claimed that stolen merchandise from a Rodman's Drugstore in Gaithersburg, Maryland, had been sold to a man named "Jimmy" in the area of Half and Q Streets, S.W. The affidavit detailed that police investigation of the particular stolen items had verified this tip and other information supplied by the police informant and his accomplice.[4] Additional police observation confirmed meetings between appellant and the informant and his accomplice.

The affidavit further outlined the relationship between these parties, listing the type and quantity of items stolen and sold, the prices, and the time span of the relationship. The affidavit also included a description of the unsuccessful efforts of the affiant, Detective Johnson, to serve appellant with the grand jury subpoena which had been issued three days earlier. In concluding the affidavit, the affiant specified the object of the search as books and records of purchases and sales of merchandise and monies received and spent by the corporations.[5] On the same day that the affidavit was presented, a judge issued a search warrant which Detective Johnson promptly executed.

[4] The affidavit referred to the informant and the accomplice as W-2 and W-1, who were identified at trial as Sutherland and Redman.

[5] He reasoned that appellant must retain such books "for inspection by various regulatory agencies of the local and federal government."

On November 1, 1978, the grand jury charged appellant with nine felony counts and one misdemeanor count of receiving stolen property. On December 7, 1978, appellant filed a motion to suppress the records which had been seized from his stores. The trial court denied that motion on February 21, 1979.

At trial, the prosecution put forth in considerable detail Sutherland's extensive criminal record. On cross-examination, the defense questioned the witness about possible crimes or illegal activities from May 1977 through October 1977. The witness responded that he had earned income at the time from violating other laws. Later in the trial, when defense counsel sought to elicit the details of the criminal activity of this informant, the witness invoked his Fifth Amendment privilege. The trial judge had ruled in a hearing prior to this invocation that the witness had waived this right by his general disclosure of other illegal activities. The trial court warned Sutherland that his claim was not legally justified. The witness persisted in his refusal to provide the details, however, thereby serving to limit cross-examination on these questions.

The trial court then denied a prosecution motion to reconsider its waiver ruling, and denied a defense motion to strike the witness' direct testimony. The jury was instructed to weigh the credibility of Sutherland's testimony, considering the improperly claimed privilege. On June 20, 1979, appellant was convicted of three felony counts and of the misdemeanor count of receiving stolen property.

II

Appellant asserts as error the denial of his motion to suppress the evidence obtained from the search of his

stores. He contends primarily that the affidavit in support of the warrant was insufficient to establish probable cause because of several defects. Only the following challenges to the affidavit warrant discussion: (1) that the information in the affidavit was stale; (2) that the reliability of the informant was not established in accordance with the requirement of Aguilar v. Texas, 378 U.S. 108 (1964), and Spinelli v. United States, 393 U.S. 410 (1969); and (3) that the officer included false and misleading statements in his affidavit. We find that the affidavit contained sufficient information from which the issuing judge reasonably could conclude that evidence of criminal activity likely would be present on the premises of appellant's stores. We conclude that both the affidavit and the warrant were valid.

In reviewing the sufficiency of the affidavit, we are confined to examining the affidavit itself. Bynum v. United States, D.C. App., 386 A.2d 684, 686 (1978), citing Aguilar v. Texas, supra. at 109 n.1, and Giordenello v. United States, 357 U.S. 480, 486 (1958). An affidavit in support of a warrant must allege facts which justify a finding of probable cause at the time the judge or magistrate issues the warrant. Sgro v. United States, 287 U.S. 206, 211 (1932). The warrant in question was issued on August 11, 1978. The affidavit contained information provided by informants and by police investigation spanning a year, including specific dates of the alleged criminal conduct. Appellant argues that since this information followed from an informant's initial contact in August 1977, the information in the affidavit was stale and the affidavit therefore did not establish probable cause.

A lapse in time between the occurrence of criminal activity and the issuance of a warrant may be important, but it is not necessarily controlling as to the warrant's

staleness. State v. Carbone, 172 Conn. 242, ____, 374 A.2d 215, 221, cert. denied, 431 U.S. 967 (1977). The test of whether so much time has elapsed between the commission of unlawful acts and the issuance of a warrant as to vitiate probable cause is one of reasonableness. Underdown v. District of Columbia, D.C.App., 217 A.2d 659, 661 (1966); see In re Search Warrant Dated July 4, 1977, ____F.2d____ (D.C. Cir., No. 79-2138, Oct. 2, 1981, slip op. at 37-38). When assessing the effect of the passage of time on the possible deterioration of probable cause, we consider the likelihood of evidence remaining in one place for a period of time, and the character of the crime, the things to be seized, and the place to be searched. Andresen v. State, 24 Md.App. 128, 172, 331 A.2d 78, 106, aff'd, 427 U.S. 463 (1976); United States v. Reid,634 F.2d 469, 473 (9th Cir. 1980), petition for cert. filed, 50 U.S.L.W. 3062 (U.S. May 29, 1981) (No. 80-2028) ("The passage of time is not necessarily a controlling factor. Both the nature of the criminal activity involved and the kind of property for which authorization to search is sought are also important factors in evaluating probable cause."); see, e.g., United States v. Brinklow, 560 F.2d 1003, 1005-06 (10th Cir. 1977), cert. denied, 434 U.S. 1047 (1978).

The search warrant sought to secure appellant's business records which would document certain purchases, sales, and transactions within the souvenir stores from January 1976 to June 1978, the period of the alleged criminal activity. The warrant did not include the stolen items received and sold by appellant. Rather, the material sought consisted of records normally maintained in the course of one's business.[6] The passage of time between

[6] The rationale behind securing these records was that evidence of illegal business dealings would be determinable through an examination of the records.

the alleged criminal conduct and the issuance of the warrant becomes less significant where the materials sought are business records and the holder of these records continues his established business.

Practical considerations and common sense are relevant concerns in determining whether the items sought likely would remain on the premises for some time. United States v. Brinklow, supra, 560 F.2d at 1006; State v. Carbone, supra, 172 Conn. at ____, 374 A.2d at 221. The records here were of a stationary nature. Appellant's books documenting his sales and purchases probably would be kept in his stores for some time for various purposes. Moreover, the most reasonable place for their maintenance would be in appellant's stores. United States v. Reid, supra, 634 F.2d at 472-73 ("It was reasonable for the magis trate to expect that such [business records] would be found at [appellant's] offices.") See In re Search Warrant Dated July 4, 1977, supra, slip op. at 38. Here, as in Andresen v. Maryland, 427 U.S. 463, 478 n.9 (1976), "[t]he business records sought were prepared in the ordinary course of [appellant's] business.... It is eminently reasonable to expect that such records would be maintained in those offices for a period of time." We find no infirmity in the information supplied in the affidavit.

Appellant also alleges that the unreliability of the informant dictated sup-pression of the evidence. He attacks the bare statement in the affidavit that a "reliable confidential informant" supplied information as insufficient under the requirements of Aguilar and Spinelli. Reviewing the affidavit in its entirety, how ever, we find indicia of reliability sufficient to support the veracity of the informant.

Analyzing an affidavit containing an informant's tips requires application of the two-pronged test established by Aguilar v. Texas, supra, and Spinelli v. United States, supra. The first prong examines the informant's own perceptions leading to his belief of criminal activity. The second prong tests the credibility of the informant and the reliability of his information. Id. These prongs have been labeled, respectively the informant's basis of knowledge and his veracity. Nance v. United States, D.C.App., 377 A.2d 384, 387-88 (1977).

Conceding that the affidavit satisfied the first prong, appellant contends that it failed the veracity test. Consequently, our inquiry focuses on the sufficiency of the affidavit to demonstrate the informant's reliability. Bynum v. United States, supra, 386 A.2d at 687.

Certain indicia of credibility and reliability have been recognized in establish-ing the veracity of the informant. The most common source of reliability is a history of providing the police with accurate information. United States v. Davis, D.C.App., 387 A.2d 1091, 1092 (1978); United States v. Watts, 176 U.S.App. D.C. 314, 318, 540 F.2d 1093, 1097 (1976). Although the affidavit here failed to specify previous reliability, such an averment is not necessary, United States v. Harris, 403 U.S. 573, 581-82 (1971), and its absence does not negate other potential bases of reliability.

Relying on Draper v. United States, 358 U.S. 307 (1959), Spinelli held that the reliability of an informant could be established through the independent observations of the affiant-officers. Id., at 417. In order to insure the integrity of the informant, the officers may employ

these independent observations to cooroborate, authenticate, or verify the informant's statements. Here, the cooroboration of the thefts by police investigation confirms the reliability of the informant's statement. Subsequent to Sutherland's contacts, Detective Johnson verified the thefts through stolen item reports from the stores which matched the items described by the informant. Police observation of a transaction among appellant, the informant, and his accomplice, followed by a contact confirming the meeting, also verified the informant's account. See, e.g., United States v. Berry, 150 U.S.App.D.C. 187, 195, 463 F.2d 1278, 1286 (1972).

An admission of criminal conduct implicating oneself has been recognized as an indication of an informant's reliability. United States v. Harris, supra, 403 U.S. at 583; United States v. Davis, 199 U.S.App.D.C. 95, 111, 617 F.2d 677, 693 (1979), cert. denied, 445 U.S. 967 (1980). The information which Sutherland supplied to the police constituted declarations against penal interest, and such admissions added to the trustworthiness of his statement.[7]

---

7 Sutherland was serving sentences for arson and counterfeiting. On the basis of the information which Sutherland supplied to the police, the prosectuion agreed to drop charges pending against him for interstate transportation of stolen goods. "That the informant may be paid or promised a 'break' does not eliminate the residual risk and opprobrium of having admitted criminal conduct." United States v. Harris, supra, 403 U.S. at 583-84.

Because the informant satisfied two indicia of reliability, the veracity prong was demonstrated adequately in the affidavit. We find no error in the trial court's conclusion that the issuance of the search warrant rested on proper probable cause.

Relying on Detective Johnson's reference to Sutherland as "unreliable" when the initial investigation ceased in September 1977, appellant also contends that the affidavit contained intentionally false and misleading information. At trial, Detective Johnson conveyed the meaning of this statement, explaining that Sutherland may not have been informing the police of all of his activities. Since this challenge revolves essentially around the veracity of the affidavit which we already have discussed, we need address this issue only briefly.

An affidavit is presumed valid until a substantial preliminary showing to the contrary is presented. Franks v. Delaware, 438 U.S. 154, 155-156, 171-172 (1978).Franks held that "...[t]o mandate an evidentiary hearing, the challenger's attack must be more than conclusory and must be supported by more than a mere desire to cross-examine. There must be allegations of deliberate falsehood or of reckless disregard for the truth, and those allegations must be accompanied by an offer of proof." Id., at 171. Here, appellant fails to make such a showing with his mere reliance on the September statement of Detective Johnson. It should be noted, moreover, that Franks specifically held that even if all the foregoing requirements be met, no hearing is required if the remaining content of the warrant is sufficient to support a finding of probable cause. Id., at 171-72. Since appellant presents no other basis for the alleged falsity of the affidavit and, too,

because other indicia of reliability have been demonstrated, we are unpersuaded by his argument.

III

Appellant finally contends that the trial court erred in refusing to strike the testimony of Sutherland after he unjustifiably invoked his privilege against self-incrimination on cross-examination. Assuming Sutherland's claim was improper, it was within the discretion of the trial judge to limit his testimony according to appropriate standards. United States v. Cardillo, 316 F.2d 606, 613 (2d Cir.), cert. denied 375 U.S. 822 (1963). We find that the trial judge did not abuse his discretion by instructing the jury that it could reject all or part of Sutherland's testimony.[8]

Our initial inquiry on this point must be whether the Fifth Amendment claim precluded cross-examination of the witness concerning testimony "bearing upon the substantive offense or offenses, as distinguished from subsidiary or subordinate matters." Johnson v. United States, D.C.App., 418 A.2d 136, 140 (1980). Appellant argues that the purpose of this line of questioning was to discover the amount of time the informant spent "boosting" with Redman and selling to appellant. Not one question, however, was structured so as to elicit such a response by the witness. The defense's questions about the witness' criminal activities were collateral and related

---

8 We reach this conclusion without addressing the issue of whether the trial judge's ruling that Sutherland had waived his Fifth Amendment privilege was correct, since our analysis of the degree of prejudice suffered by appellant is not affected by that ruling.

solely to credibility. United States v. Cardillo, supra, 316 F.2d at 611. The restricted inquiry due to the witness' refusal to respond did not cause serious prejudice to appellant since the inquiry was into collateral matters. See United States v. Gould, 536 F.2d 216, 222 (8th Cir. 1976).

Our analysis of potential prejudice against appellant resulting from the limited cross-examination also must consider whether appellant was deprived of the opportunity to test the veracity of the witness' direct testimony. Fountain v. United States, 384 F.2d 624, 628 (5th Cir. 1967), cert. denied, 390 U.S. 1005 (1968). Sutherland's testimony was corroborated by the testimony of other witnesses, particularly by that of the principal witness, Redman. The defense had sufficient opportunity to test Sutherland's credibility throughout cross-examination and did not contest any of his testimony regarding the elements of the charges against appellant.

Although appellant's cross-examination was limited on the issue of Sutherland's illegal activities, we cannot find that such restriction caused appellant the substantial prejudice necessary to require a striking of the informant's testimony. Johnson v. United States, supra, 418 A.2d at 140. The jury could judge competently the truthfulness of the witness' testimony despite the restricted cross-examination. Moreover, the trial judge cautioned the jury to consider Sutherland's testimony in light of his improper refusal to respond to certain questions. This instruction permitted the jury to decide whether to accept or to reject, in whole or in part, the

witness' testimony. Choosing this course of action was clearly within the discretion of the trial judge, United States v. Cardillo, supra, 316 F.2d at 613, and we find no error in the trial court's refusal to strike Sutherland's direct testimony.

Accordingly, no reversible error having been committed, it is

ORDERED and ADJUDGED that the judgement appealed from be, and it hereby is, affirmed.

FOR THE COURT:

/S/ Alan I. Herman]

Alan I. Herman
Clerk of the Court

Copies to:

Honorable Leonard Braman
Clerk, Superior Court

Benjamin B. Brown, Esquire
11300 Rockville Pike
Rockville, Maryland 20852

John A. Terry, Esquire
Assistant United States

District of Columbia Court of Appeals

500 Indiana Avenue, N.W.
Washington, D.C. 20001
(202) 638-7113

DISTRICT OF COLUMBIA
COURT OF APPEALS
FILED MAY 10, 1982
/s/ Alan I. Herman
Clerk

No. 79-988

JAMES M. PICCOLO, Appellant,

v.

F 4047-78

UNITED STATES, Appellee.

BEFORE: Newman, Chief Judge; Kelly, *Kern, Nebeker, *Mack, Ferren, Pryor, and *Belson, Associate Judges.

ORDER

On consideration of appellant's motion for an enlargement of time within which to file a petition for rehearing and for rehearing en banc, it is

ORDERED that the motion be granted and the Clerk is directed to file the lodged petition. Upon consideration whereof, it is

FURTHER ORDERED for the merits division* that appellant's petition for rehearing is denied. It appearing that no judge of this Court has called for a vote thereon, it is

FURTHER ORDERED that appellant's petition for rehearing en banc is denied.

PER CURIAM

Copies to:

Honorable Leonard Braman

Clerk, Superior Court

Benjamin B. Brown, Esquire
11300 Rockville Pike, #12N
Rockville, MD 20852

John A. Terry, Esquire
Assistant U.S. Attorney

GOVERNMENT OF THE DISTRICT OF COLUMBIA
METROPOLITAN POLICE DEPARTMENT
INVESTIGATIVE FILE REPORT

P.D. 854 Rev. 7/76

REPORT OF INVESTIGATION

DIVISION: Investigative Services
BRANCH: Major Crimes

FILE TITLE:
SOUVENIRE CITY
811 Market Space, NW.
PICCOLO, James M.

I. D. NO.
ARREST NO.
COMPLAINT NO.
CASE NO. 7721

☒ ACTIVE ☐ CLOSED ☐ REQUESTED ACTION COMPLETED
☐ ACTION REQUESTED FROM: ☐ OTHER

OTHER OFFICERS: Sgt. J. Davis, Det. C. Freeman

CROSS FILE ☐ RELATED FILES ☐

BY: Roger A. Johnson
UNIT: Major Crimes Branch
DATE: August 30, 1977

REPORT RE:

Observations on August 29, and August 30, 1977 and stop of Coyal G. Redman.

On August 29, 1977 at approximately 2115 hours, Dale H. Sutherland was observed coming west on Market Space with a pronounced limp carrying two packages under his arms. He was observed to enter 811 Market Space, NW. and to show the contents of the packages to the proprietor of the store, James M. Piccolo. Surviellance was lost at this time.

On August 30, 1977 at approximatley 2045 surveillance was again established at 811 Market Space, NW. and a White Ford Pickup truck Maryland registration M-11161 was observed to pull up and park in front of the location. A subject known to the investigators as Coyal G. Redman was observed to engage a subject known to investigators as James M. Piccolo in conversation. The truck was then moved from a position east on the store entrance on Market Space to a position west of the store entrance on Market Space. Mr. Redman was observed to go into the cab of this truck and remove a box contents unknown. Mr. Redman took the box into the store. At this time, a 1D scooter Officer made a business check of the premises. As soon as the Officer entered the store. Mr. Piccolo and Mr. Redman began to load empty boxes and other trash into the truck from the store. The officer inquired what Mr. Redman and Mr. Piccolo were doing and were informed that Mr. Redman was an employee of the store and that he and Mr. Piccolo were loading the trash for transport to the other store located at 7th and ~~NW~~ New York Ave., NW. At approximately 2130 hours, Mr. Piccolo closed the store and after a conversation with Mr. Redman both departed the store in their respective vehicles. Mr. Piccolo was followed as far as the 14th St., Bridge. Mr. Redman was followed to 11th and E St., NW. where he picked up Dale H. Sutherland. They were followed to the rear of 7th and ~~NW~~ New York Ave., NW. the other outlet of Souvenir City where they were observed to remove trash from the back of the truck. In the process of removing the trash from the rear of the truck, they also removed clothing from the boxes which they were allegedly transporting to that location to deposit in the trash dumpster.

After departing the rear of the 7th St., NW location the truck was followed to 11th and O St., NW where subject Redman was observed trying to sell the clothing on the Street. At approximatley 2150 hours, the subjects were stopped and the clothing was seized as suspected proceeds of crime.

DISTRIBUTION:

SIGNATURE (Officer): Roger A. Johnson

APPROVED (Supervisor and Title):

DATE: 8/31/77

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PAGE 1 OF _____ PAGES

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Form 134 USW #: _____

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA CCN:
AFFIDAVIT IN SUPPORT OF AN ARREST WARRANT ID:

DEFENDANT'S NAME: [redacted] John Doe AKA Jim LNU SEX: Male

DESCRIPTION: Race: Unknown Age: Unk Height: 5'10 Weight: 200# Eyes: Unk Hair: Unk Complication: Unk

DEFENDANT'S HOME ADDRESS: Unknown PHONE: N/A

DEFENDANT'S WORK ADDRESS: 811 Market Space, NW. PHONE: 347-4218

COMPLAINANT'S NAME: People's Drug, Incorporated

HOME ADDRESS: N/A PHONE: N/A

WORK ADDRESS: 19194 Montgomery Village Ave., Gaithersburg, Maryland 20760 PHONE: 948-6886

WHERE DID THE OFFENSE HAPPEN: 811 Market Space, NW., Washington, D. C.

WHEN DID THE OFFENSE HAPPEN: August 11, 1977

TELL BRIEFLY WHAT HAPPENED: On August 11, 1977 at approximately 9:35 pm. Det. Roger A. Johnson, your affiant and Det. Paul J. Brennan were conducting a surveillance at 811 Market Space, NW. During the course of the surveillance, a white Ford Pick-up truck, Maryland registration, M11161 registered to Wesley Wesner Morton, 904 Louisdale Drive, Hillcrest, Maryland was observed parked across the street from 811 Market Space, NW. Previous contact with the operator of this vehicle reveals that the truck is in the possession of a Coyall Garritt Redman, 6011 Bradley Lane, Clinton, Md., DOB: 08-13-37, PDID 168-499. Mr. Redman was observed inside 811 Market Space, NW., in conversation with the above described subject known to your affiant as Jim LNU an employee of Souvenir City, 811 Market Space, NW. At approximately 958 pm., Mr. Redman exited the store and returned to the truck carrying what appeared to be a large paper or plastic bag. Mr. Redman entered the truck and proceeded northwest on Pennsylvania Avenue, NW. Subject Jim LNU closed the store and entered a black 1977 Cadillac, D. C. registration 207-294 which is registered to Capitol Wholesale Imports, 811 Market Space, NW., the parent company of Souvenir City, and proceeded south on 9th St., NW., to I 395 and across the 14th St., NW. Bridge. It should be noted that the ordinary closing hours of the store are 9:30 pm., and that all other employees had left the store prior to the arrival of your affiant.

At approximately 1115 pm., your affiant received a telephone call from a confidential informant who stated that Mr. Redman had stolen a citizen band scanner and two calculators and some film from a People's Drugstore in Gaithersburg, Maryland and had sold all the proceeds from this larceny to Jim LNU, an employee of Souvenir City, 811 Market Space, NW. The informant further stated that the People's Drug Store was located inside a Mall in Gaithersburg, Maryland.

On August 12, 1977, your affiant contacted People's Drugstore, 19194 Montgomery Village Avenue, Gaithersburg, Maryland and spoke with Mr. Corrigan, the assistant manager. Mr. Corrigan stated that as of that time he had no knowledge of any larceny; however, he would institute an inventory of his citizen band scanners, and calculators and film to determine if anything was missing. On August 14, 1977, Mr. Corrigan was again contacted and he stated that he was missing a Transonic CB Scanner, and two Lloyds Pocket Calculators, and an unknown quantity for Polaroid film. Mr. Corrigan also stated that the loss had been reported to the Montgomery County Police. Also one of the store personnel, Steven M. Morgan, 10514 Cambridge Court, Gaithersburg, Md., telephone

WITNESS NAME: Steven M. Morgan ADDRESS: 10514 Cambridge Court Gaithersburg, Md. 869-4372

WITNESS NAME: Roger A. Johnson ADDRESS: 300 Indiana Ave., NW. Rm 5063 636-2684

TO: WARRANT CLERK:

Please issue a Warrant for:

John Doe AKA Jim LNU

Charge With: Receiving Stolen Property

COMPLAINANT'S NAME: _____

SUBSCRIBED AND SWORN TO BEFORE ME THIS

_____ DAY _____, 19____

_____ _____

ASSISTANT UNITED STATES ATTORNEY (JUDGE) (DEPUTY CLERK) SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

CONTINUATION OF ARREST WARRANT
AFFIDAVIT FOR JOHN DOE AKA JIM
LNU, OF VICINITY OF SOUVENIR
CITY, SILVERKEY SPACE, NV.

[redacted] number 869-6372 could possibly identify the subject who had taken the Transceiver CB Scanner.

On August 22, 1977, your affiant contacted the Montgomery County Police records unit and spoke with a Miss Baker of [redacted] that unit. She confirmed that a report was on file with the Montgomery County Police under report number B-739-990 for the larceny in question with a loss value of $ 126.00.

An inquiry was made with Mr. Lillard, Assistant Chief, Business License Branch, Department of License and Inspection to determine if Mr. Coyal Garritt Redman is the holder of any type of business license. Mr. Lillard states that he can find no record of any business license in the name of Coyal Garritt Redman.

It should be noted that Souvenir City is a wholesale and retail outlet for souvenirs of all types and does not retail or wholesale either CB Scanners or pocket calculators.

Based upon the aforementioned facts, your affiant believes that probable cause exists to wit: the statements of the informant which were verified through further investigation, and the observations of your affiant which indicate that Mr. Redman was in the store alone with the suspect and that Mr. Redman carried out of the store a bag which appeared to be empty; for the arrest of John Doe AKA Jim LNU, white male, @ 34 years, 5'10", 200 lbs., blue eyes, black hair, ruddy complexion for Receiving Stolen Property.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
METROPOLITAN POLICE DEPARTMENT
INVESTIGATIVE FILE REPORT

P.D. 854 Rev. 7/78

REPORT OF INVESTIGATION

DIVISION: Investigative Services

BRANCH: Major Crimes

FILE TITLE: PICCOLO, James Hanna
CAPITOL WHOLESALE IMPORTS, INC.

I. D. NO.

ARREST NO.

COMPLAINT NO.

CASE NO. 7721

☐ ACTIVE ☐ CLOSED ☐ REQUESTED ACTION COMPLETED
☐ ACTION REQUESTED ☐ OTHER
☐ FROM

OTHER OFFICERS

CROSS FILE

RELATED FILES

BY
UNIT: Roger A. Johnson, Major Crimes Branch
DATE: August 8, 1978

REPORT RE: Corporate Records of Capitol Wholesale Imports and East Coast Import Export.

A check with the Recorder of Deeds of the District of Columbia reveals that the below listed persons are listed as directors and officers of Capitol Wholesale Imports, Inc., and East Coast Import Export:

CAPITOL WHOLESALE IMPORTS, INCORPORATED

1978 Annual Report:

Directors:

James M. Piccolo
8401 West Boulevard Drive
Alexandria, Virginia

Frieda Piccorella
same as above

Michael Dickey
same as above

Officers:

President James M. Piccolo

Vice President None

Secretary Frieda Piccorella

Treasurer James M. Piccolo

(See PD 854 A)

DISTRIBUTION: FILE & INDEX CARDS

SIGNATURE (Officer): Roger A. Johnson

APPROVED (Name and Title): [illegible] Lieutenant

DATE: 8/7/78

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GOVERNMENT OF THE DISTRICT OF COLUMBIA
METROPOLITAN POLICE DEPARTMENT
MORALS DIVISION FILE REPORT

NATURE OF INVESTIGATION (Continuation)	DATE August 8, 1978	REPORT BY Major Crimes
SUBJECT PICCOLO, James Nunna/CAPITOL WHOLESALE IMPORTS, INCORPORATED		C. D. NUMBER

EAST COAST IMPORT EXPORT, INCORPORATED

1978 Annual Report

Directors:

Mary F. Livingston
Herbert B. Livingston
1024 Cummings Circle
Mt. Pleasant, S. C.

James M. Piccolo
811 Pennsylvania Ave., NW.

Irving Glenn Livingston
PO Box 246 Hwy 17
N. Mt.Pleasant, S. C.

Melvin M. Montague
260 Confederate Circle
Charleston, Va.

Officers:

President	Mary F. Livingston
Vice President	None
Secretary	Irving Glenn Livingston
Treasurer	James M. Piccolo

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PAGE 2 OF 2 PAGES

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UNITED STATES DEPARTMENT OF JUSTICE
FEDERAL BUREAU OF INVESTIGATION
IDENTIFICATION DIVISION
WASHINGTON, D. C. 20537

253 JE 10-6-78

Use of the following FBI record, NUMBER 40 055 F, is REGULATED BY LAW. It is furnished FOR OFFICIAL USE ONLY and should ONLY BE USED FOR PURPOSE REQUESTED. When further explanation of arrest charge or disposition is needed, communicate directly with the agency that contributed the fingerprints.

CONTRIBUTOR OF FINGERPRINTS	NAME AND NUMBER	ARRESTED OR RECEIVED	CHARGE	DISPOSITION
SPol New Castle DE	James Manna Piccolo S-16,408	5-25-63	breach of the peace	$10 & cost paid & rel
Balto Co PD Towson MD	James Manna Piccolo 34340	11-1-64	DC	
Army	James Manna Piccolo US52639095	9-29-65 Ft Jackson		
Post Stockade Ft Jackson SC	James Manna Piccolo US 59 639 095	10-9-65	inquiry	
US Atty Wash DC	James Manna Piccolo 261-613	8-14-78	RSP O/W	
Fairfax Co PD Fairfax VA	James M. Piccolo 48288	8-15-78	Common Law Simple Aslt on Minor	

METROPOLITAN POLICE DEPARTMENT WASH., D.C.

PROSECUTION NO. .T

PD FORM 163 REVISED 3/70

3. DEFENDANT'S NAME (Last, First, Middle) PICCOLO, James Vincent	12. SEX	13. DATE OF BIRTH	14. V. V. NO.
	M	Aug. 9, 43	
15. ALIAS	16. CITY AND STATE OF BIRTH		17. SOC. SEC. NO.
None	Baltimore, Maryland		
18. ADDRESS (No. & Street, City, State, Zip Code)	19. TIME IN THE DISTRICT OF COLUMBIA		20. SOC. SEC. NO.
8401 West Blvd, Dr, Alexandria, Va, 22308	12-13 Years		222 88 35 98

21. CO-DEFENDANTS: NUMBER ____ IF MORE THAN 4 CO-DEFENDANTS, LIST NAME & ADDRESSES OF OTHERS IN STATEMENT OF FACTS SEC.

NAME, ADDRESS AND ZIP CODE	NAME, ADDRESS AND ZIP CODE
1 None	2
3	4

22. POLICE CHARGE(S)

Receiving Stolen Property o/a 22-3601-2D

23. LOCATION OF OFFENSE	DATE	TIME
811 Market Space NW	8-11-77	9:15PM
24. LOCATION OF ARREST	DATE	TIME
Investigative Serv Div, Room 3063, 300 Indiana Ave NW	8-16-78	1430hrs
25. ARRESTING OFFICER'S NAME, RANK, BADGE NO. & UNIT OR AGENCY	26. ARRESTING OFFICER'S NAME, RANK, BADGE NO. & UNIT OR AGENCY	
Peter G. Rendall,Det II, 3032 IID/MCB	A1 B. Johnson,Det II	

27. DEFENDANT ADVISED OF RIGHTS

DATE	TIME	LOCATION	ADVISING OFFICER'S NAME	RANK	BADGE NO.	UNIT
8-16-78	1430	IID/MCB	Peter G. Rendall	Det.	3032	IID/MCB

28. WITNESSES: FOR ADDITIONAL WITNESSES USE STATEMENT OF FACTS SECTION

	NAME (Last, First & M.I.)	ADDRESS	ZIP CODE	AGE	HOME PHONE	BUSINESS PHONE
1						
2						
3						
4						

29. PROPERTY STOLEN (✓ IF YES ☑) AND RECOVERED (✓ IF YES ☐) /OR ITEMS OF EVIDENCE

	(a) IDENTIFICATION	(b) DOR, WHERE, WHEN RECOVERED	(c) FROM WHOM	VALUE OF STOLEN
1	(1) Transonic CB Scanner			$
2	(2) Lloyds Pocket Calculators			
3	Bsk Quantity of Polaroid Film			
4				

30. WORK HISTORY (INCLUDE PRESENT JOB, IF ANY ON LINE 1)

	FROM - DATES - TO		EMPLOYER	ADDRESS	BUS. PHONE	OCCUPATION
1	11/72	Pres	Self Employed	811 Market Space NW	347-4318	Souvenier Shop
2			Def. does not remember any further			
3						

31. ARREST RECORD SUMMARY

1	6-15-72 Disc Ct Disp.	2	
3		4	
5		6	

32. M.O. (Weapons or instruments used, disguises and duress)

Owner & Operator of souvenier shop Recipient of stolen property from burglars.

33. AGENCY RECORD NUMBER

PAGE 1 TO I.D. • PAGE 2 & 3 TO PROSECUTOR IF JUVENILE TO V.D. • PAGE 4 OFFICER • PAGE 5 (YELLOW) DISTRICT COPY.

PAGE 4

REVERSE CARBON AND FILL IN REVERSE SIDE OF THIS FORM

CHECK LAST COPY FOR LEGIBILITY BEFORE TURNING IN REPORT

REVERSE CARBON

31. FAMILY AND RELATIVES

RELATIONSHIP	AGE	NAME (Last, First & M.I.)	ADDRESS	ZIP CODE	PHONE NUMBER
		[redacted]			

32. FRIENDS AND ASSOCIATES

NAME (Last, First & M.I.)	AGE	ADDRESS	ZIP CODE	PHONE NUMBER
[redacted]				

33. ATTACHMENTS BROUGHT TO PROSECUTOR: (Check)

- ☐ CONTINUATION REPORT
- ☐ ARREST REPORT
- ☐ OFFENSE REPORT
- ☐ SUPPLEMENT REPORT
- ☐ SEARCH WARRANT
- ☐ ARREST WARRANT
- ☐ LOCAL RECORD
- ☐ F.B.I. RECORD
- ☐ STATEMENTS
- ☐ CERTIFICATE OF NO
- GUN LICENSE
- ☐ CITATION

34. DRAFT STATUS: NO. & ADDRESS OF LOCAL DRAFT BOARD

35. SELECTIVE SERVICE NUMBER

36. MILITARY STATUS: BRANCH OF SERVICE & DATES From - To

37. DATE OF DISCHARGE — TYPE OF DISCHARGE

38. STATEMENT OF FACTS Give a brief statement, in your own words, of the facts surrounding the offense and the arrest, indicate oral or written statements made by the defendant(s). Use Continuation Form PD 252 A for additional space. Note present condition of any injured person(s). TELEPHONE CALL MADE ☐ YES ☐ NO ☒

Did not wish to make a phone call

On 8-11-77 at approx 9:35pm the def. did receive property which had been stolen from the Peoples Drug Store located at 19194 Montgomery Village Ave, Gaithersburg, Maryland 20760. This property consisted of that which is listed on the front of this report.

On 8-11-78 at approx 1230hrs three search warrants were executed at various locations in the District of Columbia and as a result of these warrants certain property was seized. Also on this date an arrest warrant was issued for the def. charging him with Receiving Stolen Property

On 8-14-78 at 1430hrs the def. along with his lawyer surrendered himself to the undersigned. Def. was advised of his rights and processed.

40. FOR PROSECUTORS USE

41. FINAL DISPOSITION

42. NAME (Typed) AND SIGNATURE OF AFFIANT	BADGE	RANK	UNIT	DATE	43. NAME (Typed) AND SIGNATURE OF APPROVING OFFICIAL	DATE
[redacted]	[redacted]	DET	[redacted]	[redacted]	[redacted]	8-14-78

TYPE OF REPORT: ☒ OFFENSE ☐ INCIDENT

METROPOLITAN POLICE DEPARTMENT
WASHINGTON, D.C.
EVENT REPORT

COMPLAINT NUMBER: 311-120

1. EVENT CLASSIFICATION: 23 # 38
2. EVENT LOCATION: 811 Market Space NW
3. BEAT: 13
4. UNIT: 10
5. DA: 511
6. DATE/TIME OF EVENT: 7/11/77 C2158
7. DATE/TIME OF REPORT: 8/4/77 NSD
8. RADIO RUN RECEIVED: ☐ YES ☐ NO TIME
11. ☐ PUBLIC PROPERTY ☒ PRIVATE PROPERTY
9. OCCURRED LOCATION: Mk. Business
12. WEAPON OBTAINED: N/A
10. VEHICLE, WEAPONS USED: N/A
13. METHOD: N/A

14. COMPLAINANT/MISSING PERSON/FIRM: 1. People's Drug Store
SEX/RACE/DOB: N/A
15. COMPLAINANT/MISSING PERSON: 2.
16. HOME ADDRESS: 4444 Daisy Ln. Wagon Rd. Southern Body MD.
17. HOME PHONE:
18. HOME PHONE:
19. BUSINESS ADDRESS/SCHOOL: Same as 17
20. BUS. PHONE:
21. BUSINESS ADDRESS/SCHOOL:
22. BUS. PHONE:
23. ADDITIONAL MEANS TO CONTACT COMPLAINANT OR REPORTING PERSON:
24. REPORTED BY: Johnson, Roger A.
25. RELATION TO COMPLAINANT: alone.
26. ADDRESS: 301 Indiana Ave. NW
27. PHONE NUMBERS: Res 727-4928 Bus 72-24

28. SICK/INJURED PERSON: 1. 2.
29. DESCRIBE INJURY:
30. WHERE TAKEN/BY WHOM:
31. ☐ ADMITTED RELEASED ☐ ADMITTED ☐ RELEASED

32. PROPERTY
CODE: (S) STOLEN (R) RECOVERED (L) LOST (V) VEHICLE FROM UNION THEFT RECOVERED (I) IMPOUNDED (E) EVIDENCE (F) FOUND (O) OTHER
33. PROPERTY RUSH AND CODE

CD	ITEMS	SER. NO./OP. I.D. NO.	COMP. VALUE	USE	SPEC VALUE
3	one Transonic CB Super		$100.00	New	$16.00
3	one Uncle Pocket Calculator		$27.00	New	26.00
3	Unknown Quantity of Stolen		Unk.	New	Unk.

YEAR	MAKE	MODEL	COLOR	BODY	TAG/STATE/YEAR	VIN NO.

34. EVID. TECH. NOTIFIED/CODE #:
35. INVESTIGATOR NOTIFIED:
36. SUPERVISOR NOTIFIED:
37. TELETYPE NOTIFIED:
38. TOTAL VALUE: 128.00

	RACE	SEX	AGE	HEIGHT	WEIGHT	EYES	HAIR	COMPLX	BEARD	HAT	COAT	JACKET	PANTS	SHOES
39. ☐ SUSPECT ☐ MISS. PERS														
40. ☐ SUSPECT ☐ MISS. PERS														

41. NARRATIVE: DESCRIBE THE EVENT AND STATE POLICE ACTION TAKEN

On August 04, 1977 Mr. James M. Peach surrendered to members of this command on USW 01615-77 of the Superior Court of the District of Columbia charging Receiving Stolen Property (Felony).

3 Receiving Stolen Property (Felony).

☐ See Missing Person Information On Reverse ☐ See Continuation On Reverse

42. REPORTING OFFICER: Roger E. Johnson — BADGE/ID# 2116 — 43. SECOND OFFICER — BADGE/ID# — 44. TELETYPE NUMBER

45. STATUS: ☐ OPEN ☐ UNFOUNDED (EXPLAIN IN ITEM 41) ☐ SUSPENDED (EXPLAIN IN ITEM 41) ☐ CLOSED (IF CLOSED BY ARREST LIST UNIT AND ARREST NUMBER) — Note: If closed by arrest attach P.D. 252

46. REPORT REVIEW OFFICER — 47. SUPERVISOR: Pvt. W. Cressop — BADGE/ID# 1910 — 48. REVIEWED — 49. DISTRIBUTION

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PD 252 Rev. 1/78

CLASSIFICATION CHANGE
ADDITIONAL INFORMATION

METROPOLITAN POLICE DEPARTMENT
WASHINGTON, D.C.
SUPPLEMENT REPORT

2. COMPLAINT NUMBER: 321-120

1. ORIGINAL CLASSIFICATION: Receiving Stolen Property
4. DATE ORIG. CLASS.: 8/6/78
5. CLASSIFICATION CHANGED TO:
6. COMPLAINANT: Jewels Drug Store
7. DATE ORIGINAL REP.: 8/6/78
8. DISTRICT: 1D
9. DATE THIS REPORT: 8/21/78
10. REPORTING OFFICER: T S Dimacali
11. ADDITIONAL PROPERTY
(V) VEHICLE FROM UNION THEFT RECOVERED
CODE: (S) STOLEN (R) RECOVERED (L) LOST (F) FOUND (I) IMPOUNDED (E) EVIDENCE (O) OTHER
12. PROPERTY BOOK & PAGE NOS.

CD	ITEMS	SER. NO./OP. I.D. NO.	COMP. VALUE	AGE	OFFICE VALUE

YEAR	MAKE	MODEL	COLOR	BODY	TAG/STATE/YEAR	VIN. NO.

13. NARRATIVE. RECORD YOUR ACTIVITY AND ALL DEVELOPMENTS IN THE CASE SUBSEQUENT TO YOUR LAST REPORT. LIST THE NAMES, ADDRESSES, SEX, RACE, AGE AND ARREST NUMBERS OF ALL ARRESTED PERSONS. EXPLAIN ANY CHANGE IN CLASSIFICATION. LIST THE NAMES, ADDRESSES AND TELEPHONE NUMBERS OF ALL WITNESSES.

14. ADDI. VALUE:
15. GRAND VALUE:
16. TOTAL VALUE:

Case cleared with the arrest of James N. Piccola, 8401 West Bouleward Drive, Alex. VA., male, white, 35, MD Arrested pursuant to U.S.C. 16 85-78 of D.C. Superior Court charging Receiving Stolen Property

☐ See Continuation On Reverse

17. REPORTING OFFICER: R.A. Johnson Det. 5D Squad — BADGE/ORG. SYM.
18. INVESTIGATOR — BADGE/ORG. SYM.
19. RELEVING NUMBER

20. ☐ OPEN ☐ PRIOR CLOSED ☐ CLOSED
☐ UNFOUNDED (EXPLAIN IN ITEM 13) ☐ SUSPENDED (EXPLAIN IN ITEM 13)

21. REPORT REVIEW OFFICER — SUPERVISOR: Lt. W. Chaconas — BADGE/ORG. SYM.: 2nd — 22. REVIEWED — 23. DISTRIBUTION

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DETAIL SHEET: AUGUST 11, 1978

FOR WARRANTS reference CASE #7721

CRUISER 174: SGT. CHESSER
(Page 152)
BETTY

SOUVENIR CITY
811 Market Space, N.W.

CRUISER 177: JOHNSON, R.A.
RANDALL, P.G.

SOUVENIR CITY
934 - 7th Street, N.W.

CRUISER 171: BAILEY, W.H.
BRADLEY, J.E.

EAST COAST IMPORT-EXPORT
#39 Que Street, S.W.

CRUISER 172: CAGNEY, W.B.
OBENHEIN, E.C.
~~WANTED~~

~~CRUISER 170: BERRY, T.~~

Cagney - EXECUTED - Warrant. - HOMES

Blanks - arrest & W.O. RIGHTS + ~~ARRANGE~~

WANTED - CAMERA.

SGT - CRUISER/RADIO.

METROPOLITAN POLICE DEPARTMENT
Property Record
Property In Custody Of The Property Division

PART I — COMPLETE FOR ALL PROPERTY

1. DISTRICT OR DIVISION	3.	5. PROPERTY BOOK NO.	6. PAGE NOS.	8. PROP. OR LOCATION: DISTRICT OR DIVISION	9. COMPLAINT NO.
Inv. Serv. Div.	NO. 2 OF 7 REPORTS	1525	231-232	Inv. Serv. Div.	381-302
7. DATE ACQUIRED	8. DATE DISPOSED	9. TYPE (VALUABLES, EVIDENCE, FOUND)			10. TOTAL CASH
8/11/78		EVIDENCE			0 None
11. OWNER'S NAME: LAST, FIRST, MIDDLE		12. OWNER'S ADDRESS			13. PHONE NUMBER
East Coast Import Export, Inc.		# 39 Q St., SW.			903-639-2767
14. RECOVERING OFFICER'S NAME		15. WHERE FOUND: IF ON PERSON GIVE			16. CLAIMANT NOTIFIED
E. C. Chanhain		Inside # 39 Q St., SW.			YES ☐ NO ☐ EXPLAIN IN ITEM 37
17. CLAIM BY FINDER/OWNER OR SURRENDERED BY NAME		18. ADDRESS			19. AMOUNT OF CLAIM
N/A		N/A			0 N/A
20. IF PROPERTY FOUND ENTER NAME OF FINDER		21. ADDRESS OF FINDER			22. DATE FOUND
N/A		N/A			N/A

23. COMPLETE STATEMENT OF FACTS: IF VEHICLE INCLUDE PRESENT LOCATION. IF REVERSE SIDE IS USED DO NOT WRITE IN THIS SPACE

The below described property was seized pursuant to a Superior Court Search Warrant issued for the entire premises for business records. Pursuant to a conversation with Lt. Cissel of the Property Division these records will be retained at the unit level until such time as an accountant has had an opportunity to conduct an audit.

☐ CHECK IF REVERSE SIDE IS USED

PART II — ITEM (COMPLETE DESCRIPTION OF ALL PROPERTY AND CONDITION OF MOTOR VEHICLES, I.E., broken glass, missing parts, etc.)

24. DESCRIPTION

1) four (4) boxes containing business records which reflect the conduct of business by East Coast Import Export, Incorporated from January 1, 1976 to June 1, 1978.

X INDICATES CHECKED ON ALL IDENTIFIABLE PROPERTY. ATTACH COPY OF INQUIRY

PART III — ITEMS FOR ALL MOTOR VEHICLES IMPOUNDED OR IN CUSTODY OF THE PROPERTY CLERK

25. CHARGE	26. REASON FOR IMPOUNDING	27. ANTI-FREEZE	28. RADIATOR DRAINED & TAGGED
		☐ YES ☐ NO	☐ NO ☐ YES-DATE

29. YEAR	30. MAKE	31. BODY STYLE	32. COLOR	33. NO. OF TIRES	34. AUTO THEFT BUR. CLASS	35. DATE AND TIME

36. TAG NUMBER STATE-YEAR	37. SERIAL NUMBER	38. VT NOTIFIED-NAME	39. DATE AND TIME

PART IV — ITEMS FOR ALL EVIDENCE OR PROCEEDS OF CRIME

40. CHARGED AGAINST	41. ADDRESS	42. AGE
James M. Piccolo	8401 WestBouleward Dr., Alexandria, Va.	35
43. CHARGED AGAINST	44. ADDRESS	45. AGE

46. CHARGES	47. ARREST NO.	48. DISPOSITION BY COURT	49. DATE
Receiving Stolen Property (Felony)	MD-963		

50. OFFICER PREPARING P.D. 81: PRINT NAME, BADGE, AND ELEMENT	51. SIGNATURE OF COMMANDING OFFICER
Roger A. Johnson 3106 ISD/MCB	

52. RECEIVED THE ABOVE-DESCRIBED PROPERTY: SIGNATURE	53. ADDRESS	54. DATE

55. RETURNED BY	56. ON ORDER OF	57. SOLD	58. SALE PRICE	59. DESTROYED BY: INITIALS	60. STORAGE FEE REC. NUMBER
			0		

61. TO B.C. TREASURER	62. DATE	63. WHERE PROPERTY STORED	64. REGISTER NUMBER
		☐ VAULT ☐ WAREHOUSE ☐ [illegible]	

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CRIME AGAINST PROP.
Montgomery County, Maryland
Department of Police

COLLEGE VILLE DRUG STORE
8141 NEW HAMPSHIRE AVE, SILVER SPRING, MD
20910
DIST 3
R73576

LARCENY
472

DRUG STORE
PHOTO COUNTER
08 11 77 TO 08 12 77
08-15-77 1700 HRS

COLLIGAN, WILLIAM ROBERT W-M-30 770-4732
12200 BEARFIELD CT #14 COLESVILLE, MD 946-4886

CODE W-WITNESS P-PARENT G-GUARDIAN

MORGAN, STEPHEN M. W 10517 CARRIAGE CT, RANDOLPH, MD 879-4571 942-4886
NONE
NONE

W/M - 6/0 - 150 - ROLLS - LIGHT BRN HAIR AND MUSTACHE
DARK CLOTHING, NEATLY DRESSED

HANDS — ASKED HE CARRIED AWAY — EXIT DOOR
DET RIGAN 08-8077 CIS — 1 LARGE — 1 - 0 —
ENTRANCE DOOR

ISSUED CASE RECEIPT KNOWN TO WITNESS

13 ASSIST MGR.

REF ITEMS STOLEN:
2 - LLOYDS CALCULATORS, MODEL CR21
GRAY PLASTIC CASE, $4.00 EACH $27.00

STATUS: OPEN — CLOSED BY: ARREST — EXCEPTION — UNFOUNDED
R BETHEA #45 — 08 15 77 — Hull — I/C

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CONTINUATION REPORT
Montgomery County, Maryland
Department of Police

OFFENSE: BURG. - STORE

1994 MAUD VILLAGE AVE., GAITH., MD.

24748

06223

ITEM NO.	DESCRIPTION	PROPERTY VALUE	VAL.	CODE	SUSPECT
	1 - TRAV-SONIC, 8-CHANNEL TOWNER.				
	MODEL SC-801, NFD.	1 $30.00	✓		FT
	15 - PACKS POLAROID FILM, SX-70	1 $30.00	✓		FT
	INVESTIGATION REVEALED THE ABOVE DESCRIBED SUSPECT WAS OBSERVED BY MORGAN, AN EMPLOYEE, AT THE PHOTO COUNTER. NUMEROUS TIMES DURING THE EVENING OF 08-11-77 MORGAN OBSERVED THE SUSPECT MAKE CONTACT MORGAN KNOW HE WAS IN THE STORE THAT EVENING. MORGAN DID NOT SEE THE SUSPECT REMOVE ANYTHING FROM THE STORE.				
	ALL ITEMS STOLEN WERE REMOVED FROM THE PHOTO COUNTER.				
	DET. ALLAN FROM MCP INTELLIGENCE SECTION ADVISED THE UNDERSIGNED D.O. POLICE WERE INTERESTED IN THIS CASE AND THAT MCP WAS INVOLVED IN A SIMILAR INVESTIGATION CONCERNING A SIMILAR SUSPECT.				
	DET ALLAN REQUESTS THAT A COPY OF THIS REPORT BE SENT TO HIM AND CR DIVISION OF MCP COUNTY SECTION.				

DISTRIBUTION					
		R. Sowell #45	08-11-77	Full	073770

METROPOLITAN POLICE DEPARTMENT
WASHINGTON, D.C.
EVENT REPORT

1. TYPE OF REPORT: ☐ OFFENSE ☒ INCIDENT
2. COMPLAINT NUMBER: 381-302
3. EVENT CLASSIFICATION: [illegible]
4. EVENT LOCATION: [illegible]
5. DIST: [illegible]
6. BEAT: [illegible]
7. SUB: [illegible]
8. DATE/TIME OF EVENT: 3/10/76 1335
9. DATE/TIME OF REPORT: 3/14/76 0956
10. GOOD RUN DESCRIBED: ☐ NO ☐ YES TIME _____
11. ☐ PUBLIC PROPERTY ☒ PRIVATE PROPERTY
12. PROCESSING LOCATION: [illegible]
13. WEAPON DISPOSED: N/A
14. TOOLS, WEAPONS USED: N/A
15. METHOD: N/A

16. COMPLAINANT/MISSING PERSON/FIRM — SEX/RACE/DOB:
1. [illegible] Roger A. — M/W/adult
2.
17. HOME ADDRESS: [illegible] A.S.A.P.
18. HOME PHONE: 737-4282
19. HOME ADDRESS
20. HOME PHONE
21. BUSINESS ADDRESS/SCHOOL: [illegible]
22. BUS. PHONE: 737-4383
23. BUSINESS ADDRESS/SCHOOL
24. BUS. PHONE
25. ADDITIONAL MEANS TO CONTACT COMPLAINANT OR REPORTING PERSON
26. REPORTED BY: [illegible], Roger A.
27. RELATION TO COMPLAINANT: Self
28. ADDRESS: [illegible]
29. PHONE NUMBERS: HM 737-4282 BUS [illegible]

30. VICTIM/INJURED PERSON
1.
2
31. DESCRIBE INJURY
32. WHERE TAKEN/BY WHOM
33. ☐ ADMITTED ☐ RELEASED
☐ ADMITTED ☐ RELEASED

34. PROPERTY — CODE: (S) STOLEN (R) RECOVERED (L) LOST (I) IMPOUNDED (E) EVIDENCE (F) FOUND (O) OTHER
35. VEHICLE FROM WHICH THEFT OCCURRED
36. PROPERTY BOOK AND PAGE NO.

CD	ITEMS		SER. NO./OP. I.D. NO.	COMP. VALUE	AGE	MPDC VALUE

YEAR	MAKE	MODEL	COLOR	BODY	TAG/STATE/YEAR	VIN NO.

37. EVID. TECH. NOTIFIED/CODE #
38. INVESTIGATOR NOTIFIED
39. SUPERVISOR NOTIFIED
40. VELETYPE NOTIFIED
41. TOTAL VALUE

	RACE	SEX	AGE	HEIGHT	WEIGHT	EYES	HAIR	COMPLX	SCARS	HAT	COAT	JACKET	PANTS	SHOES
☐ SUSPECT ☐ MISS. PERS.														
☐ SUSPECT ☐ MISS. PERS.														

42. NARRATIVE: DESCRIBE THE EVENT AND STATE POLICE ACTION TAKEN

4 [illegible] 7th St. N.E., [illegible] 56 56

[illegible] addressed for the business records of [illegible] Code was the first two and last three digits [illegible]

5 [illegible], Unit 18, [illegible] 56, Event 32, 7th & K St.

6 [illegible]

☐ See Missing Person Information On Reverse ☒ See Continuation On Reverse

43. REPORTING OFFICER — BADGE/ORG SUB — [illegible]
44. SECOND OFFICER — BADGE/ORG SUB
45. VELETYPE NUMBER

46. STATUS ☐ OPEN ☐ UNFOUNDED (EXPLAIN IN ITEM 42) ☐ SUSPENDED (EXPLAIN IN ITEM 42) Note: If closed by arrest attach P.D. 252
☐ CLOSED (IF CLOSED BY ARREST LIST UNIT AND ARREST NUMBER)

47. REPORT REVIEW OFFICER
48. SUPERVISOR — BADGE/ORG SUB
49. REVIEWED
50. DISTRIBUTION

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MISSING PERSON INFORMATION

1. COMPLAINT NUMBER

2. POSSIBLE CAUSE OF ABSENCE AND DESTINATION

3. PHYSICAL/MENTAL CONDITION- DIABETIC, SUICIDAL, ETC.

4. IF SUBJECT HAS RUN AWAY OR LEFT HOME BEFORE GIVE DATE AND WHERE LOCATED

5. DESCRIBE ARTICLES OF JEWELRY WORN AND IDENTIFICATION CARRIED

6. CLASSIFICATION
☐ CRITICAL ☐ NON-CRITICAL

7. CLASSIFIED BY

8. MISSING PERSONS SECTION NOTIFIED

9. PARENT/GUARDIAN'S NAME	10. ADDRESS	11. HOME PHONE	12. BUS. PHONE
9. PARENT/GUARDIAN'S NAME	10. ADDRESS	11. HOME PHONE	12. BUS. PHONE

CONTINUATION REPORT

13. NARRATIVE CONTINUED

211 Kimball Span. NW, RA 521, 34C St, SW, RA 556; 954 7th St. NW, RA 526.

14. REPORTING OFFICER	BADGE/ORG SUB	15. SECOND OFFICER	BADGE/ORG SUB	16. SUPERVISOR	BADGE/ORG SUB

1. TYPE OF REPORT ☐ OFFENSE ☒ INCIDENT

METROPOLITAN POLICE DEPARTMENT
WASHINGTON, D.C.
EVENT REPORT

3. COMPLAINT NUMBER: 381-33

4. EVENT CLASSIFICATION: Stolen Vehicle
5. EVENT LOCATION: 934 7th St. N.W.
6. BEAT: 15 | 7. DIST: 1D | 8. SO: 886
9. DATE/TIME OF EVENT: 7/16 1035
10. DATE/TIME OF REPORT: 7/16 1045
11. RADIO RUN RECEIVED: ☐ NO ☐ YES TIME
12. ☐ PUBLIC PROPERTY ☒ PRIVATE PROPERTY
13. OCCURRED LOCATION: Right in front
14. WHERE ENTERED: N/A
15. VEHICLE WEAPONS USED: N/A
16. METHOD: N/A

17. COMPLAINANT/MISSING PERSON/FINDER: 1. Johnson, Roger A. | SEX/RACE/DOB: M/B 10/11/11
18. COMPLAINANT/MISSING PERSON: 2.
19. HOME ADDRESS: 3[illegible] 2nd St. N.W.
20. HOME PHONE: 7[illegible]
21. HOME ADDRESS
22. HOME PHONE
23. BUSINESS ADDRESS/SCHOOL: [illegible]
24. BUS. PHONE: 7[illegible]
25. BUSINESS ADDRESS/SCHOOL
26. BUS. PHONE

27. ADDITIONAL MEANS TO CONTACT COMPLAINANT OR REPORTING PERSON
28. REPORTED BY: Johnson, Roger A.
29. RELATION TO COMPLAINANT: Owner
30. ADDRESS: 3[illegible] 2nd St. N.W.
31. PHONE NUMBERS: Hm 7[illegible] Bus 7[illegible]

32. SICK/INJURED PERSON: 1.
33. DESCRIBE INJURY
34. WHERE TAKEN/BY WHOM
35. ☐ ADMITTED ☐ RELEASED
☐ ADMITTED ☐ RELEASED
2.

36. PROPERTY
CODE: (S) STOLEN (R) RECOVERED (L) LOST (I) IMPOUNDED (E) EVIDENCE (F) FOUND (O) OTHER
(V) VEHICLE FROM WHICH THEFT OCCURRED
37. PROPERTY BOOK AND PAGE NO.

CD	ITEMS	SER. NO./OP. I.D. NO.	COMP. VALUE	AGE	MFDR VALUE
R	Black 1941 Cadillac		2[illegible]	4yr	10[illegible]

YEAR	MAKE	MODEL	COLOR	BODY	TAG/STATE/YEAR	VIN NO

38. EVID. TECH NOTIFIED/CASE #
39. INVESTIGATION NOTIFIED
40. SUPERVISOR NOTIFIED
41. TELETYPE NOTIFIED
42. TOTAL VALUE: 10[illegible]

	RACE	SEX	AGE	HEIGHT	WEIGHT	EYES	HAIR	COMPLX	BEARD	HAT	COAT	JACKET	PANTS	SHIRT
43. ☐ SUSPECT ☐ MISS. PERS														
44. ☐ SUSPECT ☐ MISS. PERS														

45. NARRATIVE DESCRIBE THE EVENT AND STATE POLICE ACTION TAKEN

Complainant reported the above vehicle stolen from the above location. Upon receipt of a Superior Court Bench Warrant, the above described vehicle was impounded pursuant to crime. The vehicle was located upon information received from Complainant which indicated that vehicle was not found within the jurisdiction of the Complainant which caused a Hot Sheet jurisdiction.

☐ See Missing Person Information On Reverse ☐ See Continuation On Reverse

46. REPORTING OFFICER: [illegible] | BADGE/ID# 5[illegible]
47. SECOND OFFICER | BADGE/ID# 5LM
48. TELETYPE NUMBER

49. STATUS: ☐ OPEN ☐ UNFOUNDED (EXPLAIN IN ITEM 45) ☐ SUSPENDED (EXPLAIN IN ITEM 45) Note: If closed by arrest attach P.D. 252
☐ CLOSED (IF CLOSED BY ARREST LIST UNIT AND ARREST NUMBER)

50. REPORT REVIEW OFFICER
51. SUPERVISOR | BADGE/ID# 5LM
52. REVIEWER
53. DISTRIBUTION

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GOVERNMENT OF THE DISTRICT OF COLUMBIA
METROPOLITAN POLICE DEPARTMENT
INVESTIGATIVE FILE REPORT

P.D. 584 Rev. 7/76

REPORT OF INVESTIGATION

DIVISION: Investigative Services | BRANCH: Major Crimes

FILE TITLE: [redacted] 811 Market Space, NW.

I. R. NO. | AGENCY NO.

COMPLAINT NO. | CASE NO.

☒ ACTIVE ☐ CLOSED ☐ REQUESTED ACTION COMPLETED ☐ ACTION REQUESTED FROM: ☐ OTHER

BY: R. L. Johnson
UNIT: Major Crimes Branch
DATE: 8/11/77

OTHER OFFICERS: Det. R. J. Brennan

CROSS FILE ☐ ☐ ☐ ☐ ☐ | RELATED FILES

REPORT RE:

Receipt of stolen property.

On August 11, 1977, Det. Johnson and Brennan while conducting surveillance on Security Sly 811 Market Space observed a white Ford Pick-up truck operated by Ogrell Robson DCD 148-479 parked on Market Space at the end nearest Pennsylvania Ave., NW. Subject Robson was observed inside the store with a subject believed to be James Picollo the owner. Robson left the store approximately 2145 hours carrying what appeared to be either a large paper bag or a blanket. At approximately 2200 hours, subject Picollo was observed to leave the store carrying nothing. Picollo held a short conversation with a subject who stopped him on the sidewalk. Picollo then got into a 1977 Cadillac DC tag [redacted] and proceeded down 9th St., NW. to I 395 heading for Virginia where surveillance was terminated.

At 2300 hours, source # 37 contacted Det. Johnson and related the following information. It and Robson had gone to a Peoples Drug Store possibly located at Montgomery Mall. # 37 stated that it was it was a mall there and had to go inside to reach the stores. While in the store, subject Robson stole one CB Scanner, three pocket calculators and some film. When Robson attempted to obtain the calculators one of the [redacted] store personnel approached him and inquired if he could help Robson. This subject was described by # 37 as a white male in his early 20's (possible independent witness).

Following conversation with # 37 a call was placed to the Rockville Substation of the Montgomery County Police for possible confirmation of the theft. MCPD report was on file at that MCPD time. Called to Rockville Station, confirmed that there is a Peoples Drug located in the Montgomery Village Shopping Mall. No report of a larceny at this time. Peoples will be contacted in the morning to see if the larceny can be confirmed.

JIMMY PICOLLO'S WAREHOUSE — 2142 QUEENS CHAPEL ROAD NE - LISTED TO SILBERNE - & SOUVENEIR SALES RLJ 8/11/77

DISTRIBUTION:

SIGNATURE (Officer): R. L. Johnson

APPROVED (Name and title) | DATE

OFFICIAL USE ONLY

PAGE 1 OF 1 PAGES

This report is the property of the Metropolitan Police Department. Neither it nor its contents may be disseminated outside the agency to which loaned.

USA 1687-73

AFFIDAVIT IN SUPPORT OF AN APPLICATION FOR A SUPERIOR COURT OF THE DISTRICT OF COLUMBIA SEARCH WARRANT FOR THE PREMISES OCCUPPIED BY CAPITOL WHOLESALE IMPORTS, INCORPORATED AND EAST COAST IMPORT EXPORT, INCORPORATED. THE PREMISES OCCUPPIED BY CAPITOL WHOLESALE IMPORTS, INCORPORATED ARE DESCRIBED AS FOLLOWS: 811 MARKET SPACE, NORTHWEST, ALSO KNOWN AS 811 PENNSYLVANIA AVENUE, NORTHWEST, A THREE STORY STOREFRONT BUILDING, BRICK AND FRAME CONSTRUCTION WITH PLATE GLASS WINDOWS IN FRONT ON THE GROUND FLOOR; A PLATE GLASS DOOR WITH ALUMINUM FRAME IS LOCATED IN THE CENTER OF THE GROUND FLOOR RECESSED INTO THE FRONT OF THE BUILDING APPROXIMATELY THREE FEET WITH A RED AND WHITE STRIPED AWNING ACROSS THE FRONT OF THE BUILDING ON THE GROUND FLOOR, THE BUILDING NUMBER IS LOCATED ON THE TOP OF THE BUILDING ON AN EXTENTION OF THE FRONT AND READS 811; TWO LARGE SIGNS APPEAR ON THE BUILDING BETWEEN THE GROUND FLOOR AND THE SECOND FLOOR AND THE SECOND FLOOR AND THE THIRD FLOOR BOTH SIGNS READ SOUVENIRS; 934 7th STREET, NORTHWEST, A TWO STORY CONCRET AND BRICK AND FRAME STRUCTURE WITH PLATE GLASS WINDOWS ON THE GROUND FLOOR FACING 7th STREET AND K STREET, NORTHWEST; THE MAIN ENTRANCE IS LOCATED ON THE 7th STREET NORTHWEST SIDE OF THE BUILDING AND IS A PLATE GLASS DOOR WITH AN ALUMINUM FRAME; THERE ARE SIGNS ON THE 7th STREET AND K STREET SIDES OF THE BUILDING READING SOUVENIR CITY CIGARETTES POST CARDS BOOKS ONE OF THE LARGEST SELECTIONS IN TOWN; THE BUILDING STANDS ALONE ON THE CORNER OF 7th STREET AND K STREET, NORTHWEST WITH A PARKING LOT OCCUPPYING THE REST OF THE IMMEDIATE AREA ON THE 7th STREET SIDE AND ON THE K STREET SIDE. THE PREMISES OCCUPPIED BY EAST COAST IMPORT EXPORT, INCORPORATED IS DESCRIBED AS FOLLOWS: 39 Q STREET, SOUTHWEST, A TWO STORY BRICK WAREHOUSE STRUCTURE WITH A LARGE GRAY COLORED GARAGE DOOR ON THE Q STREET SIDE OF THE BUILDING; THE NUMBER 39 IS SPRAY PAINTED ON THE FRONT OF THE BUILDING ABOVE THE RIGHT CORNER OF THE GARAGE DOOR. THIS APPLICATION IS MADE FOR THE SEIZURE OF ALL BOOKS AND RECORDS (SEE ATTACHMENT ONE OF THIS AFFIDAVIT) OF THE CORPORATIONS LISTED ABOVE WHICH REFLECT VIOLATIONS OF DISTRICT OF COLUMBIA CODE TITLE 22 Chapter 22 SECTION 2205 RECEIVING STOLEN PROPERTY AS SET FORTH BELOW.

****

On July 20, 1977, Detective Roger A. Johnson, Metropolitan Police Department, Investigative Services Division, Major Crimes Branch was contacted by Corporal Miles Alban, Montgomery County Police Department who stated that a reliable confidential informant had contacted him and stated that W-1 had stolen some merchandise from a Rodmans Drug Store located in Gaithersburg, Maryland. The informant further stated that W-1 had sold the merchandise to a subject known to the informant as "Jimmy" LNU in the area of Half and Q Streets, Southwest, Washington, District of Columbia. The informant also stated that "Jimmy" LNU was operating a 1977 Cadillac black in color D. C. registration 207-294. This vehicle is listed to Capitol Wholesale Imports, Incorporated, 811 Market Space, Northwest. Based upon the information provided by Corporal Alban an investigation was initiated by the Major Crimes Branch of the Investigative Services Division and assigned to your affiant to determine the identity of "Jimmy" LNU with the intent of initiating prosecution for Receiving Stolen Property in violation of the District of Columbia Code.

Following this contact, your affiant was able to verify that a larceny had occurred at the Rodman's Drug Store located 218 North Frederick Avenue, Gaithersburg, Maryland, which involved the same merchandise described by Corporal Alban's informant as being sold to "Jimmy" by W-1. This larceny was reported to the Montgomery County Police under report number R 735015 on July 19, 1977.

During the course of the investigation, your affiant had occasion to have several interviews with W-1 and W-2 who stated that they had a relationship with a Mr. James Piccolo who is the P[illegible] 7th Street, Northwest; and Treasurer of East Coast Import-Export, Incorporated, 39 Q Street, Southwest. These companies specialize in souvenirs of Washington, D. C. and environs and convenience items related to sightseeing in general, ie. film for all makes of cameras, small pocket cameras, flash cubes, maps of the area and other items. They stated that the nature of that relationship was one of selling stolen goods which they had acquired through larcenies at area retail stores to Mr. Piccolo for cash, at the following locations: 811 Market Space, Northwest; 934 7th Street, Northwest; and # 39 Q Street, Southwest. They stated that the majority of the items sold to Mr. Piccolo were items which Mr. Piccolo would sell in the normal course of his business; ie. polariod film in all sizes but only color film, flash cubes and magic cubes, "T" shirts with the decals "Maryland is for Crabs" and "Virginia is for Lovers" on same, small appliances such as pocket calculators, small portable television sets, pocket cameras, CB radios, and CB scanners. W-1 also stated that this relationship continued on a daily basis from approximatley February of 1977 until April 1, 1978. It would sell Mr. Piccolo on an average of $100.00 to $300.00 worth of goods a day during this period. This represents a retail price of approximately $300.00 to $900.00 worth of goods a day, since Mr. Piccolo paid W-1 an average of one third the retail price of the goods.

USW 1687

Both W-1 and W-2 stated that Mr. Piccolo was aware the goods sold to him by them had been obtained by larceny. On a number of ocassions, both W-1 and W-2 had received orders from Mr. Piccolo for specific goods which Mr. Piccolo wanted them to steal for him. W-1 stated that it had committed the larceny described in paragraphs 1 and 2 of this affidavit. It further stated that Jimmy Piccolo always operates the vehicle with D. C. registration 207-294. It knows that the vehicle is property of the corporation but that Mr. Piccolo uses it as his private auto.

On August 11, 1977, your affiant and Detective Paul J. Brennan of this command which conducting a surveillance at 811 Market Space, Northwest, observed W-1 in conversation with James M, Piccolo. Mr. Piccolo was identified from a photograph taken by this Department June 15, 1972. This observation occurred at 9:35 pm. At approximately 9:58 pm, W-1 departed the store. Mr. Piccolo also departed the store at about 9:58 pm and entered a 1977 black Cadillac, D. C. registration 207-294. Mr. Piccolo proceeded south on 9th Street Northwest to I-395 and across the 14th Street Bridge where contact was lost. At approximatley 11:15 pm, your affiant was contacted by W-2 who stated that it had been with W-1 when W-1 had stolen a CB Scanner and two pocket calculators and an unknown quantity of polaroid film from a People's Drug Store in Gaithersburg, Maryland. All the property obtained in this larceny was sold to "Jimmy" at 811 Market Space, Northwest.

Further investigation reveals that this theft occurred at 19194 Montgomery Village Avenue Gaithersburg, Maryland, a Peoples Drug Store. This theft was reported to the Montgomery County Police Department under Report number R-739990.

On August 8, 1978, a Grand Jury Subpeona for all business records (see Attachment One of this Affidavit) of Capitol Wholesale Imports, Incorporated and East Coast Import-Export Incorporated was issued and given to your affiant for service. These subpoenas were to be served upon the President of Capitol Wholesale Imports, Incorporated (James M. Piccolo) and the treasurer of East Coast Import-Export, Incorporated (James M. Piccolo). Service was attempted by your affiant on August 9, 1978. Mr. Piccolo could not be located at 811 Market Space, Northwest, # 39 Q Street, Southwest, or at 934 7th Street, Northwest. Your affiant placed a telephone call to 811 Market Space, Northwest on 347-4218 and was informed by a female employee at that location that Mr. Piccolo had taken the day off, but would be working tomorrow, August 10, 1978. Your Affiant and Detective Peter G. Randall of this command went to Mr. Piccolo's home address, 8401 West Boulevard Drive, Alexandria, Virginia to attempt service. Upon arrival at that location, we noted that the premises was for sale through the Routh Robbins Real Estate Company and that the premises was not occupied.

On August 10, 1978, your affiant again attempted service at the business addresses and again was unable to locate Mr. Piccolo. A telephone call was made to 811 Market Space, Northwest on 347-4218 and a female employee stated that Mr. Piccolo would be in later in the day. When pressed further, the employee stated that she was not sure when he would be in. She stated he might be in for closing at 10:00 pm or that he might be in on Saturday.

Having obtained this information, your affiant interviewed Mr. Ron Greenleese, a real estate agent with Routh Robbins Real Estate Company in Virginia, 768-3000. Mr. Greenleese stated that Mr. Piccolo had listed the property with him approximatley a week to ten days ago. Mr. Greenleese stated that Mr. Piccolo had indicated he was going to rent another premises to live in at an undisclosed location. Mr. Piccolo further stated that he travelled a great deal in the course of his business and was planning to go to the orient. Mr. Piccolo stated that in the event that a contract was offerred for his home he could be reached through his business number 347-4218 and that his employees would know where he could be reached.

Your affiant then contacted the United States Postal Service, Community Branch, 7311 Fordson Road, Alexandria, Virginia, 765-4251 which services the area that includes 8401 West Boulevard Drive and inquired if Mr. Piccolo had had his mail either stopped, held at the post office, or forwarded to a new address. Your affiant was informed that Mr. Piccolo had not done either.

Your affiant then contacted the United States Department of State Passport Office to determine if Mr. Piccolo had a passport and if so had he recently applied for a visa to travel abroad. Your affiant was informed that Mr. Piccolo does have a passport and has made application for a visa to leave the United States.

AFFIDAVIT CONTINUED PAGE 3

USA 1687

Based upon the information furnished above, principally the fact that W-1 and W-2 both stated that the merchandise sold to Mr. Piccolo was principally used in his business, and that he knew that the merchandise was proceeds of larcenies and the corporations described above must retain books and records of purchases and sales of merchandise for purposes of accounting for monies received and spent by the corporations and that such books and records listed in attachment one of this affidavit will reflect the manner in which these corporations were operated by Mr. Piccolo and others and that these records should be kept on the premises of the corporation for inspection by various regulatory agencies of the local and federal government, it is bleived that probable cause exists for the issuance of a search warrant to search the above named premises for such books and records as are listed in attachment one of this affidavit and to seize them if found.

John Hannigan
MPDC
8/11/78
Sworn to:

Roger A. Johnson
Det II
Metropolitan Police Dept.

8/11/78
Date

Judge

ATTACHMENT NUMBER ONE

Schedule of documents

USA 1057-78

1. Any and all corporate financial records including, but not limited to books of account, ledger sheets, financial records, payroll records, bank records including monthly account statements, deposit slips, checks, loans and loan applications.

2. All corporate records pertaining to the sale and purchase for resale of merchandise, including, but not limited to:
   a. lists of suppliers and distributors;
   b. billing records;
   c. sales receipts;
   d. sales tax records;
   e. inventories;
   f. retail price lists for all items sold;
   g. wholesale price lists of suppliers or distributors;
   h. invoices of items received from suppliers;
   i. order forms from all suppliers.

3. Any and all corporate records pertaining to the organization of the corporation including, but not limited to the articles of incorporation, by laws, minutes of meetings of shareholders and the board of directors, a list of all officers and directors including names, addresses and telephone numbers, a list of all employees including names, addresses and telephone numbers.

From January 1, 1976 to and including June 1, 1978.

USA 16,374-7.

ATTACHMENT II

Mr. Piccolo by virtue of his position in both Capitol Wholesale Imports, Incorporated and East Coast Import Export, Incorporated is required to maintain certain records which reflect gross purchases at wholesale and gross sales receipts for accounting and tax purposes. Due to his purchases of stolen property over the last several months, those records may reflect evidence of the crime of Receiving Stolen Property in violation of 22 D.C. Code § 2205. Due to Mr. Piccolo's actions over the past two weeks, detailed above your affiant believes that unless these records are seized immediately there is grave danger of their being destroyed.

Form 9-87

USA 1657-73

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

SEARCH WARRANT

TO: the Chief of Police or his agent
(Specific Law Enforcement Officer or Classification of Officer of the Metropolitan Police Department or other Authorized Agency)

Affidavit, herewith attached, having been made before me by Detective Roger A. Johnson that he has probable cause to believe that on the ~~(person)~~ (premises) ~~(vehicle) (object)~~ known as East Coast Import-Export, Incorporated @ 39 Q Street, Southwest in the District of Columbia, there is now being concealed certain property, namely books and records as listed in attachment one of the affidavit which accompanies this warrant

which is records of violation of 22 DCC 2203 and as I am satisfied
(alleged grounds for seizure)

that there is probable cause to believe that the property so described is being concealed on the above designated ~~(person)~~ (premises) ~~(vehicle) (object)~~ and that the foregoing grounds for issuance of the warrant exists.

YOU ARE HEREBY AUTHORIZED within 10 days of the date of issuance of this warrant to search ~~(in the nighttime/in the daytime/at any time of the day or night)~~ the designated ~~(person)~~ (premises) ~~(vehicle) (object)~~ for the property specified, and if the property specified, and if the property be found there

YOU ARE COMMANDED TO SEIZE IT, TO WRITE AND SUBSCRIBE IN AN inventory of the property seized, to leave a copy of this warrant and return, to file a further copy of this warrant and return with the Court on the next Court day after its execution.

Issued this 11 day of August, 1978

Judge, Superior Court of the District of Columbia

RETURN

I received the above detailed warrant on August 11, 1978 and have executed it as follows:

On August 11, 1978, at 12:31 o'clock P. M., I searched the ~~(person)~~ (premises) ~~(vehicle)~~ ~~(object)~~ described in the warrant and I left a copy of the warrant and return with Left on premises

~~(Name of person searched or owner, occupant, custodian or person present at time of search)~~
property posted. Secured by pad lock & chain to door (Mailbox by Ernest Williams)

The following is an inventory of the property taken pursuant to this warrant:
From top of safe — one Index Card File with Locked Lock one telephone directory & Misso papers; From File Cabinet Assorted record files, Two books of assorted records in back of office (behind desk) ON floor: Four empty boxes from premises to Carry records.

This inventory was made in the presence of Sgt. Iacobello; Det. Whited; Det. Coughlin; Det. McAfee; Det. Hayes-MPD — Maurice Kelly - Capt. MPD, D.C.F.D.; Bob Comey MPD; Ernest Williams - Wife Mary Alice Agnew

I swear that this is a true and detailed account of all property taken by me under this warrant.

Subscribed and sworn to before me this 11 day of August, 1978

Judge, Superior Court of the District of Columbia

USA 1678-73

Form W-07

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

SEARCH WARRANT

TO: the Chief of Police or his agent
(Specific Law Enforcement Officer or Classification of Officer of the Metropolitan Police Department or other Authorized Agency)

Affidavit, herewith attached, having been made before me by Detective Roger A. Johnson that he has probable cause to believe that on the ~~(person)~~ (premises) ~~described herein~~ known as Souvenir City 811 Market Space, NW., also known as 811 Pennsylvania Avenue, NW.

in the District of Columbia, there is now being concealed certain property, namely books and records as listed in attachment one of the affidavit which accompanies this warrant.

which is records of violation of 22 DCC 2205 and as I am satisfied
(alleged grounds for issuance)

that there is probable cause to believe that the property so described is being concealed on the above designated ~~(person)~~ (premises) ~~(vehicle) (object)~~ and that the foregoing grounds for issuance of the warrant exist.

YOU ARE HEREBY AUTHORIZED within 10 days of the date of issuance of this warrant to search ~~forthwith (giving notice of identity and purpose)~~ in the daytime ~~(it appearing from the affidavit)~~ the designated ~~(person)~~ (premises) ~~(vehicle) (object)~~ for the property specified, and if the property specified, and if the property be found there

YOU ARE COMMANDED TO SEIZE IT, TO WRITE AND SUBSCRIBE IN AN inventory of the property seized, to leave a copy of this warrant and return, to file a further copy of this warrant and return with the Court on the next Court day after its execution.

Issued this 11 day of August, 1978

Judge, Superior Court of the District of Columbia

RETURN

I received the above detailed warrant on August 11, 19 78 and have executed it as follows:

On August 11, 1978, at 12:25 pm o'clock P M., I searched the ~~(person)~~ (premises) ~~(vehicle) (object)~~ described in the warrant and I left a copy of the warrant and return with Georgia Mauskiotes, an employee at Souvenir City 811 Market Space, NW.
(name of person exhibited or otherwise, occupant, custodian or person present at place of search)

properly posted.

The following is an inventory of the property taken pursuant to this warrant:
10 envelopes addressed to Capitol Wholesale Imports, Inc. containing apparent company correspondence,
2 envelopes addressed to East Coast Import-Export, Inc. containing apparent company correspondence,
2 envelopes addressed to Boulder City containing apparent company correspondence,
1 Deposit slip for Capitol Wholesale Imports, Inc.
1 Stwl. .38 Cal revolver loaded w/ 2 rounds serial # 196273.

This inventory was made in the presence of Georgia Mauskiotes.

I swear that this is a true and detailed account of all property taken by me under this warrant.

Roger A. Johnson
Executing Officer

Subscribed and sworn to before me this 14th day of August, 1978

Richard R. Atkinson
Judge, Superior Court of the District of Columbia

P-07B

Form 9-37

US. [illegible]

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

SEARCH WARRANT

TO: the Chief of Police or his agent
(Specially Law Enforcement Officers or Classification of Officers of the Metropolitan Police Department or other Authorized Agents)

Affidavit, herewith attached, having been made before me by Det active Roger A. Johnson that he has probable cause to believe that on the ~~(premises)~~ (premises) ~~(described as follows)~~ known as Souvenir City, 934 7th Street, NW.

in the District of Columbia, there is now being concealed certain property, namely books and records as listed in attachment one of the affidavit which accompanies this warrant.

which is records of violation of 22 DCC 2201 and as I am satisfied
(alleged grounds for issuance)

that there is probable cause to believe that the property so described is being concealed on the above designated ~~(person)~~ (premises) ~~(vehicle) (object)~~ and that the foregoing grounds for issuance of the warrant exists.

YOU ARE HEREBY AUTHORIZED within 10 days of the date of issuance of this warrant to search ~~(with reasonable physical restraint only if absolutely necessary)~~ in the daytime ~~between the hours of 10:00 P.M. and 6:00 A.M.~~, the designated ~~(person)~~ (premises) ~~(vehicle) (object)~~ for the property specified, and if the property specified, and if the property be found there

YOU ARE COMMANDED TO SEIZE IT, TO WRITE AND SUBSCRIBE IN AN inventory of the property seized, to leave a copy of this warrant and return, to file a further copy of this warrant and return with the Court on the next Court day after its execution.

Issued this 11 day of August, 19 78

[signature]
Judge, Superior Court of the District of Columbia

RETURN

I received the above detailed warrant on August 11, 19 78 and have executed it as follows:

On August 11, 19 78, at 12:25 o'clock P M., I searched the ~~(person)~~ (premises) ~~(vehicle) (object) described in~~ the warrant and I left a copy of the warrant and return with Thomas Smith, Manager of Souvenir City
934 7th St., NW., Michael Dickey Corporate Treasurer
(Name of person searched or owner, occupant, custodian or person present at place of search)

~~no~~ property seized.

I further list an inventory of the property taken pursuant to this warrant:

1 Books of records & Ledgers pertaining to Attachment 1 one of the Affidavit Accompanying this Warrant
1 Playboy pocket Calculator
1 Penninghall Panel Safe
1 Sew rite Sewing machine

This inventory was made in the presence of Michael Dickey

I swear that this is a true and detailed account of all property taken by me under this warrant.

[signature]
Affiant

Subscribed and sworn to before me this 11th day of August, 19 78

[signature]
Judge, Superior Court of the District of Columbia

D-4750

SUPERIOR COURT

OF THE

DISTRICT OF COLUMBIA

Holding a Criminal Term

Grand Jury Sworn in on August 4, 1978

THE UNITED STATES OF AMERICA	:	Criminal No:
v.	:	Violation: 22 D.C. Code 108, 2201; 2205; 108, 2202
COYAL G. REDMAN JAMES M. PICCOLO		(Bringing Stolen Property Into The District Of Columbia; Receiving Stolen Property)

The Grand Jury charges:

FIRST COUNT:

On or about March 22, 1977, outside of the District of Columbia, Coyal G. Redman stole property belonging to a person whose identity is unknown to the Grand Jury of a value of $100 or more, consisting of film, flash cubes, shirts and other property whose identity is unknown to the Grand Jury, and brought said property into the District of Columbia.

SECOND COUNT:

On or about March 22, 1977, within the District of Columbia, James M. Piccolo, with intent to defraud, received property of a person whose identity is unknown to the Grand Jury of a value of $100 or more, consisting of film, flash cubes, shirts and other property whose identity is unknown to the Grand Jury, which had been stolen, knowing and having cause to believe that they were stolen.

THIRD COUNT:

On or about April 3, 1977, outside of the District of Columbia, Coyal G. Redman stole property belonging to a person whose identity is unknown to the Grand Jury, of a value of $100 or more, consisting of film, flash cubes, shirts and other property whose identity is unknown to the Grand Jury, and brought said property into the District of Columbia.

FOURTH COUNT:

On or about April 3, 1977, within the District of Columbia, James M. Piccolo, with intent to defraud, received property of a person whose identity is unknown to the Grand Jury, of a value of $100 or more, consisting of film, flash cubes, shirts and other property whose identity is unknown to the Grand Jury, which had been stolen, knowing and having cause to believe that they were stolen.

FIFTH COUNT:

On or about June 13, 1977, outside of the District of Columbia, Coyal G. Redman stole property of value belonging to a person whose identity is unknown to the Grand Jury consisting of film, flash cubes, shirts and other property whose identity is unknown to the Grand Jury, and brought said property into the District of Columbia.

SIXTH COUNT:

On or about June 13, 1977, within the District of Columbia, James M. Piccolo, with intent to defraud, received property of value of a person whose identity is unknown to the Grand Jury consisting of film, flash cubes, shirts and other property whose identity is unknown to the Grand Jury, which had been stolen, knowing and having cause to believe that they were stolen.

SEVENTH COUNT:

On or about June 17, 1977, outside of the District of Columbia, Coyal G. Redman stole property belonging to a person whose identity is unknown to the Grand Jury, of a value of $100 or more, consisting of film, flash cubes, shirts and other property whose identity is unknown to the Grand Jury, and brought said property into the District of Columbia.

EIGHTH COUNT:

On or about June 17, 1977, within the District of Columbia, James M. Piccolo, with intent to defraud, received property of a person whose identity is unknown to the Grand Jury, of a value of $100 or more, consisting of film, flash cubes, shirts and other property whose identity is unknown to the Grand Jury, which had been stolen, knowing and having cause to believe that they were stolen.

NINTH COUNT:

On or about July 6, 1977, outside of the District of Columbia, Coyal G. Redman stole property belonging to a person whose identity is unknown to the Grand Jury, of a value of $100 or more, consisting of film, flash cubes, shirts and other property whose identity is unknown to the Grand Jury, and brought said property into the District of Columbia.

TENTH COUNT:

On or about July 6, 1977, within the District of Columbia, James M. Piccolo, with intent to defraud, received property of a person whose identity is unknown to the Grand Jury, of a value of $100 or more, consisting of film, flash cubes, shirts and other property whose identity is unknown to the Grand Jury, which had been stolen, knowing and having cause to believe that they were stolen.

ELEVENTH COUNT:

On or about July 13, 1977, outside of the District of Columbia, Coyal G. Redman stole property belonging to Meagran Company, Inc., a body corporate, trading as Rodman's Discount Drugs, of a value of $100 or more, consisting of a typewriter, and brought said property into the District of Columbia.

TWELFTH COUNT:

On or about July 13, 1977, within the District of Columbia, James M. Piccolo, with intent to defraud, received property of Meagran Company, Inc., a body corporate, trading as Rodman's Discount Drugs, of a value of $100 or more, consisting of a typewriter, which had been stolen, knowing and having cause to believe that it was stolen.

THIRTEENTH COUNT:

On or about August 1, 1977, outside of the District of Columbia, Coyal G. Redman stole property belonging to a person whose identity is unknown to the Grand Jury, of a value of $100 or more, consisting of film, flash cubes, shirts and other property whose identity in unknown to the Grand Jury, and brought said property into the District of Columbia.

FOURTEENTH COUNT:

On or about August 1, 1977, within the District of Columbia, James M. Piccolo, with intent to defraud, received property of a person whose identity is unknown to the Grand Jury, of a value of $100 or more, consisting of film, flash cubes, shirts and other property whose identity is unknown to the Grand Jury, which had been stolen, knowing and having cause to believe that they were stolen.

FIFTEENTH COUNT:

On or about August 11, 1977, outside of the District of Columbia, Coyal G. Redman stole property belonging to Peoples' Drug Stores, Inc., a body corporate, of a value of $100 or more, consisting of film, a citizen's band scanner, and calculators, and brought said property into the District of Columbia.

SIXTEENTH COUNT:

On or about August 11, 1977, within the District of Columbia, James M. Piccolo, with intent to defraud, received property of Peoples' Drug Stores, Inc., a body corporate, of a value of $100 or more, consisting of film, a citizens' band scanner and calculators, which had been stolen, knowing and having cause to believe that they were stolen.

SEVENTEENTH COUNT:

On or about August 22, 1977, outside of the District of Columbia, Coyal G. Redman stole property belonging to a person whose identity is unknown to the Grand Jury, of a value of $100 or more, consisting of film, flash cubes, shirts and other property whose identity is unknown to the Grand Jury, and brought said property into the District of Columbia.

EIGHTEENTH COUNT:

On or about August 22, 1977, within the District of Columbia, James M. Piccolo, with intent to defraud, received property of a person whose identity is unknown to the Grand Jury, of a value of $100 or more, consisting of film, flash cubes, shirts and other property whose identity is unknown to the Grand Jury, which had been stolen, knowing and having cause to believe that they were stolen.

NINTEENTH COUNT:

On or about September 1, 1977, outside of the District of Columbia, Coysl G. Redman stole property belonging to a person whose identity is unknown to the Grand Jury, of a value of $100 or more, consisting of film, flash cubes, shirts and other property whose identity is unknown to the Grand Jury, and brought said property into the District of Columbia.

TWENTIETH COUNT:

On or about September 1, 1977, within the District of Columbia, James M. Piccolo, with intent to defraud, received property of a person whose identity is unknown to the Grand Jury, of a value of $100 or more, consisting of film, flash cubes, shirts and other property whose identity is unknown to the Grand Jury, which had been stolen, knowing and having cause to believe that they were stolen.

Attorney of the United States in
and for the District of Columbia

A TRUE BILL:

Foreman.

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

CRIMINAL DIVISION

UNITED STATES OF AMERICA	
v.	Criminal Action Number:
JAMES M. PICCOLO,	F04047-78
Defendant.	

Washington, D. C.

Tuesday, August 22, 1978

The above-entitled action came on for a preliminary hearing before the Honorable LUKE C. MOORE, Associate Judge, in Courtroom Number 116, commencing at approximately 9:37 a.m.

THIS TRANSCRIPT REPRESENTS THE PRODUCT OF AN OFFICIAL REPORTER, ENGAGED BY THE COURT, WHO HAS PERSONALLY CERTIFIED THAT IT REPRESENTS HER ORIGINAL NOTES OF TESTIMONY AND PROCEEDINGS OF THE CASE AS RECORDED.

APPEARANCES:

On behalf of the Government:

JOHN McDERMOTT, Esquire
Assistant United States Attorney

On behalf of the Defendant:

BENJAMIN B. BROWN, Esquire
11300 Rockville Pike
Rockville, Maryland

MS. JANET J. HOLTS, RPR-CP
Official Court Reporter Telephone: 727-1766

Q On August the 11th, 1977, you had received information that led you to believe that the defendant, Mr. Piccolo, had made some purchases from which witness? No. 1 or No. 2?

A W-2.

Q W-2.

Can you tell the Court, please, why you waited from August 11th, 1977, to August 11, 1978, to attempt to ascertain whether the truth and veracity of the statements you received the year before were accurate?

MR. McDERMOTT: Objection to that question, Your Honor.

MR. BROWN: I think, Your Honor, that question --

MR. McDERMOTT: It's irrelevant to the proceedings.

THE COURT: Just one second. I can only listen to one at a time. You object, and what is your response?

MR. BROWN: My proffer is, Your Honor, that the reliability of W-1 and W-2 was in question in the officer's mind from the beginning. He waited an entire year to attempt to even execute or obtain an arrest warrant. I don't believe that he had reliable information as he alleges in another affidavit to obtain a search warrant.

THE COURT: Is this the proper forum in which to litigate that issue?

MR. BROWN: I believe as a preliminary matter, Your Honor, we may inquire.

THE COURT: Well, given the period of time -- this is a -- I guess the Court is curious about it, as well. I'll allow the question.

MR. McDERMOTT: Your Honor, if I could restate my objection? I have no objection to an inquiry into the reliability of W-1 and W-2. My objection goes to the form of the question, which was why did the officer wait. It implies he was waiting.

THE COURT: Indeed it does.

MR. BOWN: I didn't mean to presuppose that he -- The obvious is there. He waited. And I think I can inquire why he waited. He waited one year, and I think it's proper to inquire why --

THE COURT: Maybe you ought to rephrase the question.

MR. BROWN: All right, Your Honor.

BY MR. BROWN:

Q You received a statement from W-2 in -- On August 11th, 1977. Did you investigate that statement?

A I did, sir.

Q How did you investigate it?

A From the information provided by W-2, I attempted to determine where these thefts had occurred. And through that information I was able to determine approximately four days after the fact that the theft had in fact occurred.

On August the 12th, 1977, I was present as a member

of the public in the store located at 811 Market Space, Northwest, and I did not see any of the items listed in that warrant in plain view. The particular night of the incident, I believe that when Mr. Piccolo left, he placed some items in the trunk of his auto. I do not know what those items were, of course.

Q All right. Now then from August the 12th, 1977, did you make further investigations?

A Certainly, sir.

Q Now when did you ascertain that certain items that had been stolen were purchased by Mr. Piccolo?

A Approximately -- I know exactly -- July 25, 1978.

Q So it took you from August 11th to July of 1978 to ascertain that he had made a purchase in August of 1977 of stolen merchandise?

A That's correct, sir.

Q Did you believe that Mr. W-2 was a reliable witness at that time?

A At which time, sir?

Q In august of '77?

A Reliable to the point where it could be proved reliable.

Q You never relied on him to obtain a search warrant, did you?

A No, sir.

Q Had you ever relied on him prior to that date?

Had you ever ascertained he was a reliable witness from other sources?

A Yes, sir.

Q Where?

A From other sources within the police department.

Q Had he ever given you personally any information that would indicate he was a reliable witness?

A In this matter, yes, sir.

Q Not in this matter, in any other matter?

A In any other matter?

Q Yes, sir?

A Not me personally, no, sir.

Q But you swore that you had a reliable witness when you obtained the search warrant, didn't you?

When you presented it to the Court here, to obtain a search warrant, you had a reliable witness?

A Sir, I had a reliable witness to the point where the witness could be corroborated in this particular incident.

Q May I refer to your application for a search warrant, please, and if YOur Honor will indulge me --

THE COURT: Mr. Brown, you understand the Court is not determining the validity of this warrant.

MR. BROWN: I understand, Your Honor.

THE COURT: All right.

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

CRIMINAL DIVISION

UNITED STATES OF AMERICA	
v.	
JAMES M. PICCOLO,	Criminal Action No. F-4047-79
Defendant.	

Washington, D.C.
Wednesday, February 21, 1979

The above-entitled action came on for a motion to suppress before the Honorable LEONARD BRAMAN, Associate Judge, in Courtroom Number 27, commencing at approximately 11:50 a.m.

THIS TRANSCRIPT REPRESENTS THE PRODUCT OF AN OFFICIAL REPORTER, ENGAGED BY THE COURT, WHO HAS PERSONALLY CERTIFIED THAT IT REPRESENTS HER ORIGINAL NOTES AND RECORDS OF TESTIMONY AND PROCEEDINGS OF THE CASE AS RECORDED.

APPEARANCES:

On behalf of the Government:

STEPHEN GORDON, Esq.
Assistant United States Attorney

On behalf of the Defendant:

BENJAMIN B. BROWN, Esq.
Washington, D.C.

ROSE G. MOLLICHELLI
OFFICIAL COURT REPORTER

P R O C E E D I N G S

THE DEPUTY CLERK: Proceeding in United States v. James M. Piccolo, Case No. F-4047-78. Will the attorneys come forward and state your names for the record.

MR. BROWN: Benjamin B. Brown, appearing on behalf of the defendant, James M. Piccolo, who is present.

MR. GORDON: Stephen Gordon, Assistant United States Attorney.

THE COURT: This matter was set for trial yesterday and, of course, it was not reachable, since the Court was closed on account of the snow. And so, it comes before us today for the trial. We initially have a motion to suppress.

Is the Government ready?

MR. GORDON: The Government's prepared to proceed on the motion to suppress.

THE COURT: Is the defense ready?

MR. BROWN: Yes, Your Honor.

THE COURT: Before we hear testimony on the motion, I ought to ascertain what is properly before the Court and what is not properly before the Court on this motion. The original motion stated for grounds in support of the motion, as I recall it. The first ground was that the arrest and search and seizure are and were unconstitutional.

The Court is of the view that that does not properly raise any grounds for suppression of the motion. The ground

having been stated with such generality that, subject to clarification by other later stated grounds, there would be no trial issue under that allegation. And, in support of that ruling, the Court cites Perry against the United States, reported at 364 A. 2d, 617, a case decided by our Court of Appeals in 1976. Also, the Court relies upon the opinion of Judge Scott of this court in United States against David Duddles, D-u-d-d-l-e-s, in Criminal No. 83993-77. The opinion is dated November 3rd, 1977. It's entitled memorandum opinion in support of order entered, October 20th, 1977. And, these authorities implement Rule 47 of the rules of this court.

Rule 47 requires that the motion state the grounds upon which it is made. And, that has been stated, that has been held to require specific allegations of fact, which, if proven, would justify the belief requested. Moreover, the motion does not contain supporting points and authorities as required by Rule 47, I.

The second ground advanced in support of the motion was that the arrest and search and seizure lacked probable cause. The authorities that the Court has cited support the proposition that that ground is excessively generalized. However, the Court, at the status hearing of February 12th, granted the defendant leave to specify the particular grounds in support of the no probable cause allegation. And, if the supplement conforms to the required specificity, then I will

hold that to be sufficient to bring the issue before the Court.

I'll deal with the supplemental motion presently.

The third ground was that the arrest and search and seizure were the result of illegal eavesdropping. There was filed, I believe -- it was on Friday, was it not, Mr. Brown?

MR. BROWN: Yes, Your Honor.

THE COURT: -- a paper denominated reply to Government's response to defendant's motion for disclosure of electronic surveillance. I'll deal with this ground in connection with the issue raised by that paper in prior papers.

The fourth ground states that the search warrant is not -- was illegal. And, the Court holds that that assertion, that ground must fail for lack of specificity.

On the supplement, the gist of the first of four grounds stated is that the supporting affidavit for the search warrant was based on hearsay that was not in turn based upon substantial facts and circumstances. And, the issue is under -- is raised under Spinelli and Aguilar. It seems to me that that is a sufficient statement of specificity. And, since the Court invited that supplemental memorandum to show, or to delineate, the reasons for the claim of no probable cause, I'm prepared to hold that that ground is properly before the Court.

The second ground, as I understand it, Mr. Brown,

asserts staleness. That is, that an excessive interval of time intervened between the offense and the application for search warrant. I suppose the gist of it being that by then, the information was stale?

MR. BROWN: That's correct, Your Honor.

THE COURT: Now, fishing expedition, it seems to me, is just a boiler plate invocation that adds nothing to what is otherwise properly presented. And, it seems to me that it doesn't add anything to that which is otherwise not properly before the Court.

Now, Mr. Gordon, it seems to me that staleness is before the Court.

MR. GORDON: I'm prepared to respond to that issue, Your Honor.

THE COURT: Thirdly, the supplemental memorandum states that the evidence sought by the defective warrant was so broad as to allow -- and, I quote -- "carte blanche" -- to seize records that were not involved in any of the alleged crimes.

Insofar as the Court invited counsel to delipeate or to specify only on probable cause, the question is whether this assertion, which does not go to probable cause, is properly before the Court, when it was not stated in proper specificity in the original motion. That is, excessive broadness in the description of the search warrant would not have been properly

presented on the original motion.

The Court gave the defendant an added lease to life, so to speak, limited to probable cause and nothing but probable cause. And, this attempt by the supplement to bring in excessive description goes beyond probable cause. And, the Court finds that it's not properly before the Court, raised in a manner conformable to the rules of this court.

I might say that even on January 25th, the Court consorted counsel to be specific, to supplement. Nothing was done about that until the Court, on February 12th, ordered defense counsel to explicate probable cause.

As to ground four, insofar as it is construed to go to staleness, I'll permit it to be raised insofar as it deals with any other matter; then, the Court is of the view that it wasn't properly presented.

With the motion thus limited, we're ready to hear the testimony.

MR. GORDON: Your Honor, it's the Government's position initially that no testimony is required. The challenge here is to the sufficiency of the warrant. And, it is the Government's position that the legal issues raised are properly judged and determined on the basis of the affidavit.

THE COURT: You mean on Spinelli and Aguilar?

MR. GORDON: Yes, Your Honor.

THE COURT: Mr. Brown, it seems correct.

MR. BROWN: Your Honor, the question of whether or not the warrant was signed by a prosecuting official, within conformity to the statute and the rules, I think requires an evidentiary hearing with respect to the time of the alleged information delivered to the officer, upon which he based his affidavit to obtain the search warrant. I think it requires an evidentiary hearing, for, we were unable to get any hearing prior to today on that issue. I don't believe that it's — purely a matter of law. It's a matter of law after the facts have been ascertained by the Court.

There were bare allegations, bare, bold allegations, and bare allegations in the affidavit. And, those bold allegations should be met by the testimony, Your Honor.

Pardon me, may I address the Court to one matter?

THE COURT: Yes, sir.

MR. BROWN: Your Honor, we filed a memorandum in support of all our motions in the original motion to suppress. And, it was attached to the -- is part of the memorandum, Your Honor. It was broken and delineated as memorandum was directed to the bill of particulars and other discovery, being the defects and the joinder as mentioned in the indictment and generally.

THE COURT: When was that filed, Mr. Brown?

MR. BROWN: Simultaneously with the motion to suppress, Your Honor. The original motion to suppress, within

the time limit Your Honor granted us.

There was attached to all the motions this one memorandum in which I felt was an economically sound way to present the matters. And, it was filed in -- in -- and, was part of the motion to suppress and was attached to all of the motions.

THE COURT: Indulge me a moment, sir.

MR. BROWN: Thank you, Your Honor. It's called --

THE COURT: I think I have it now. Yes, it purports to -- this does, then, purport to be the memorandum of points and authorities?

MR. BROWN: Yes, Your Honor.

THE COURT: It would not cure the failure of the motion to set forth with the required specificity, the grounds involved. Except that this paper does purport to say that the prosecuting official failed to sign the search warrant. I suppose you mean the application?

MR. BROWN: Yes, Your Honor, I'm sorry, and the affidavit.

THE COURT: Nevertheless, the grounds stated by the Court for barring consideration of all the other grounds adduced on the authority of Rule 47, in the cases previously cited, still obtain.

MR. BROWN: Except that this factor exists, Your Honor, and I respectfully request for relief from the

harshness of that penalty. Is that the entire motion to suppress was tied into the affidavit in support of the motion of the warrant, the application for the warrant that was based upon hearsay upon hearsay, that it was not timely, that all of these factors lead to the conclusion that the obtaining of the search warrant was illegal, and not based upon reasonable cause to issue the search warrant, had the information been properly presented to the Court. The issue -- that it would not have been issued had they made proper allegations.

We believed -- I believed, Your Honor, that I had presented and preserved these points properly and that the -- as a matter of fact, in the preliminary hearing, in an attempt to show that the time for the search warrant was improper, that the Court in the lower court told me it had to wait because he was not -- that Court was not properly the forum to seek that which I agree with. And, we felt that we had preserved all these matters and properly so.

And, of course, we recognize that specificity is an essential element to good motions practice. We sought to preserve all these matters and we had innumerable motions. We were as specific as we could be at the time, and we believed that the evidence obtained at the hearing to suppress would develop the staleness. The fact that it was not signed by a prosecuting official --

Let's pass on to --

MR. BROWN: Before you --

THE COURT: -- Aguilar and Spinelli. Mr. Brown, I have heard this matter, fully.

MR. BROWN: All right, Your Honor.

THE COURT: Aguilar and Spinelli -- it seems to me that Mr. Gordon is correct. This is a matter that has to be decided on the face of the papers. If the defect which the defense urges is correct, it was a defect which appeared on the face of the papers. And so, the issuing judicial officer would not have had legal justification to issue the warrant. Is that not correct, Mr. Brown?

MR. BROWN: I would not argue with that point, Your Honor. But, I would like to show, through evidence, through the introduction of evidence, that the information received was totally stale.

THE COURT: I haven't gotten to staleness, yet.

MR. BROWN: All right, Your Honor. But, that seems to be intertwined with the timing of the application for the warrant, is the evidence that he, the officer, relied upon, was allegedly reliable information. And that information, if Your Honor please, was obtained at a time so remote in time that it should not have been able to support the issuance of a warrant.

THE COURT: I see that both go to probable cause.

MR. BROWN: That's right.

THE COURT: And, appreciating the force of your argument, for analytical purposes, I want to decide the issue based upon whether, in the first instance, whether, assuming arguendo, the information wasn't stale, whether Aguilar nevertheless compels the striking down of the warrant and the search.

Let me hear you on that, Mr. Gordon.

MR. GORDON: Well, Your Honor, I think it's plain from the face of the warrant that the basis for the warrant is not the assertion -- is not solely the information from the informant. Uncorroborated. In which case, the question of the reliability of the informant would become central.

THE COURT: Well, you use the singular term. Do we have an informant or do we have three informants?

MR. GORDON: I believe there's two, Your Honor.

THE COURT: Well, there's W-1 and W-2.

MR. GORDON: That's correct, Your Honor.

THE COURT: And then, the initial, quote, reliable confidential informant, unquote, who appears in the third line of the first paragraph of the body of the application.

MR. GORDON: Your Honor, as a factual matter, I believe that were testimony taken, it would show that this confidential informant was, in fact, one of the same two parties.

perhaps, as you respond, you ought to integrate the staleness issue.

MR. GORDON: Well, Your Honor, I believe that the evidence, the face of the warrant affidavit shows that the police corroborated the fact of the theft. They set up surveillance and corroborated the fact that these individuals who said that they were meeting with Mr. Piccolo were, in fact, meeting with Mr. Piccolo.

THE COURT: Wait a moment, the initial tip was verified purportedly by the official records of the police department, indicating that there had been a reported theft from Rodman's?

MR. GORDON: That's correct, Your Honor.

THE COURT: All right, then, proceed.

MR. GORDON: The evidence further shows that W-1 and W-2 indicated that they -- that there was an illegal relationship involving the sale of stolen items to the defendant, Mr. Piccolo. At given addresses of places of business that he had.

The police set up a surveillance, and on August 11th, 1977, they observed W-1 in conversation with Mr. Piccolo, who was identified as to identity by a previous police department photograph.

They also verified a tag number that informants had showed, that the witness had said Mr. Piccolo had. And, that

that came from a theft at a different store, a People's store. And, the police investigated and discovered that that theft had indeed occurred and was also recorded in official police records in Maryland.

THE COURT: Well, what about staleness?

MR. GORDON: Your Honor, I'm prepared to address that. I think that the staleness argument turns in this case, very much on the nature of the items involved as the subject matter of the search warrant, which, in this case, were business records. Business and tax records which are, in many cases, required to be kept by law. And, as a matter of common sense and common knowledge are kept for a period of quite some time by businesses.

I would like to cite a case -- I have a copy of the case, courtesy copy, which I have provided to Mr. Brown and would like to provide to the Court. The case is United States v. Brinklow, B-r-i-n-k-l-o-w, the citation of the Brinklow case is 560 F. 2d, 1003. It's a 10th Circuit case decided in 1977.

And, in that case, Your Honor, it involved a search for some citizen's band equipment. And, also, more to the point here, a notebook delineating travel figures and distances that were kept inside the defendant's van.

The warrant was issued eleven months after the accomplice had seen the items in the van.

opportunity to fully read the Brinklow case. In point of fact, I haven't read it, yet.

MR. BROWN: All right, Your Honor, I would just like to --

THE COURT: Let me mention this, if you want to respond now, I'll hear you now. On the other hand, we could take a recess and I would hear you after the recess.

MR. BROWN: May I direct your attention to one factor while Your Honor and I are both reading the Brinklow case?

THE COURT: Yes, sir.

MR. BROWN: There is not a single item sought in the application for a search warrant which was contraband in this case. In the case before the Court. There's not a single item, single allegation that the defendant in here was in possession of contraband. Items or products of a crime. That's the last -- I wanted to direct Your Honor's attention to one other thing.

The last time that the officer says in his affidavit that he spoke to W-1 was April 1st, 1978. That he discusses W-1 also stated the reason the relationship continued to a daily basis, from approximately February '77 to April 1st, '78.

And, even assuming, arguendo, for the purpose of our discussion, that W-1 said there was contraband on Mr. Brinklow's property, he, W-1, said nothing about books and records that

would reflect and enable the officer to issue a search warrant for books and records, which are privileged documents and cannot be used to compel the defendant to be a witness against himself.

What I'm saying, Your Honor, is --

THE COURT: A corporation has no privilege with regard to --

MR. BROWN: Oh, I think it does, Your Honor.

THE COURT: -- with regard to documents.

MR. BROWN: Absolutely. It could have been indicted too, Your Honor.

THE COURT: Mr. Brown, it was settled as far back as United States against Wilson, at the turn of the century, that a corporation couldn't invoke privilege against self-incrimination.

MR. BROWN: But, Your Honor, I want to stick to this one point, Your Honor. Directing your attention to the items sought by the search warrant. Nothing was contraband.

THE COURT: The Government agrees with that proposition. They're saying it was all required business records.

MR. BROWN: I don't believe so.

THE COURT: There is no disagreement between you and the Government on that score. What follows from the fact that it wasn't contraband?

MR. BROWN: It follows that there was nothing in the

records, in the premises, from April 1st of '77 -- '78, Your Honor, to August 11th, '78. At which time, the officer sought a warrant on August 11th, August 11th, '78, which was one year after the first contact with the informant. And, at the earliest, for five months, April through August, five months, that the Government sought this search warrant.

Your Honor, nothing in the search warrant directs itself to the commission of a crime. Not even the informant knew about it, that the records would reflect the commission of a crime. We're not charged with records keeping that violates the law. We're charged with having purchased stolen property. And that, in and of itself, when there is no allegation that the commission of the crime were even available any longer, the staleness of the date appears to be very, very significant.

THE COURT: We'll recess for lunch.

AFTERNOON SESSION

THE DEPUTY CLERK: Proceeding again in United States v. James M. Piccolo, Criminal Case No. F-4047-78.

MR. BROWN: Defendant and counsel, Benjamin B. Brown, are present, Your Honor.

THE COURT: Mr. Brown, did you have an opportunity to read the case?

MR. BROWN: Yes, Your Honor.

THE COURT: Do you wish to comment on it?

MR. BROWN: First, I cannot conceive of a worse case, a worse opinion. But, secondly, I would like to distinguish the opinion from the facts in this case.

First, the informant was a co-conspirator of the defendant. Secondly, and most importantly, even in this opinion, within this opinion, cited on page 1005, Your Honor, probable cause ceases to exist when it's no longer reasonable to presume that items once located on the premises are still there. We are not dealing with items of great duration, to the contrary. Film has an expiration date and the time for expiration is a reasonable period. And, evidence would disclose such a thing, Your Honor, that the probable cause that these things would still exist there are not proper in this length of time.

I would like to call -- one more part on page 1006, in which it says, none of the items -- and, they're talking about the items seized -- was contraband and inculpatory, per se, or likely to be disposed of for any other readily apparent reason.

That is the opinion of the lower court, trial court, in which he held that these, this item was likely to be present eleven months later.

I would like to refer Your Honor to the case of Schoeneman v. the United States.

THE COURT: What is the case?

MR. BROWN: Schoeneman, S-c-h-o-e-n-e-m-a-n v. U.S., 317 F. 2d 173. It was decided in 1963.

THE COURT: Which circuit?

MR. BROWN: I'm sorry, Your Honor, I don't know. I believe it's a District of Columbia case, in this circuit.

THE COURT: All right.

MR. BROWN: The Court held that probable cause for issuance of a search warrant did not exist where the application was for the warrant, was not made until a hundred and seven days after the finding of the documents which constituted the basis for the search. Additionally, the case sets forth that even if the agent had adquate reason for the delay in securing the search warrant, it was incumbent upon him -- if he had an adequate reason for the delay -- it was incumbent upon him to place in the affidavit for the search warrant the reasons for the delay.

And, the Court said in one part of the opinion, however, we cannot overlook the fact that the Government could cite. And, we could find no case which sustained a search warrant issued more than thirty days after finding of the evidence which constituted the basis of the search. And, the cite is at page 177.

THE COURT: Do you have the opinion?

MR. BROWN: No, I do not, Your Honor.

THE COURT: 317 F. 2d?

MR. BROWN: Yes, Your Honor, 317 F. 2d 173, decided in 1963.

THE COURT: All right, sir.

MR. BROWN: It would appear to me that in the Brinklow case, the item that they're seeking -- that they were seeking were items that the Court in a lower court, in its decision held were items that would remain within the house trailor. Not items that would be sold or disposed of.

But, the items in this case, they knew, or allegedly knew, that in August of 1977 -- as a matter of fact, earlier from that date, they alleged that they received reliable information that the defendant had made a purchase from the reliable informant.

I would like to say to Your Honor and refer to the fact that the police officer at the preliminary hearing testified that he had had no experience, none whatsoever, with the informant as to his reliability. And, that was one of the reasons we wanted an evidentiary hearing. Because, in the lower -- in the preliminary hearing, the Court would not let me develop into that as deeply as we would like. And, that's why we wanted to develop into it now.

THE COURT: Well, that gets to whether the affidavit on its face falls within the scope of Aguilar and Spinelli and must fall for that reason, or whether this is a case in which

the magistrate could conclude that there was probable cause, based not only upon what the informant stated, but the verification that purportedly was available from other sources.

In other words, if this were a case in which -- like Aguilar and Spinelli -- there was only the informant and nothing but the informant, there would be substance to the defendant's motion.

But, there was other evidence. And, the question is whether the combination of the information from the informant and the other evidence combined to produce probable cause.

The reliability of the informant may be proffered, based upon so-called reliable information. That is, that he was found to be reliable. If that is the case -- in other words, where you have verification which is proffered based upon the track record of the informant, then, you have a Spinelli-Aguilar situation. But here, the affidavit says the informant is reliable, which means nothing.

MR. BROWN: I don't think it says that, at all.

THE COURT: Wait a moment.

MR. BROWN: All right, sir.

THE COURT: In the third line of the first paragraph, it says a reliable informant. But, that is conclusory and is worth nothing.

MR. BROWN: That's correct, that's correct, Your

Honor.

THE COURT: The reliability, however, according to the Government's theory, comes from separate items which provide verification of the informant's reliability. In other words, the Government is trying to bolster reliability, not by a track record, but by evidence extrinsic of the informant, i.e., verification that there was a robbery. Further, by seeing the informant and the deal with the defendant.

MR. BROWN: That doesn't exist --

THE COURT: -- seeing --

MR. BROWN: I'm sorry.

THE COURT: Having a report of the later robbery. Seeing the defendant driving the vehicle as described to him by the informant. Those are other circumstances the Governments says reflect inditia of reliability to the informant. And, the question is whether they do or not.

MR. BROWN: I believe that is narrowing it, Your Honor, a little too narrow. But, I believe it's correct, as far as it goes. But, the reliability is not, insofar as the mere fact that a search warrant is successful. The search warrant must be properly issued in its inception.

THE COURT: That's axiomatic, agreed.

MR. BROWN: All right, fine, Your Honor. Then, may I go the next step?

The reliability of the informant is not set forth.

And, to merely say that Rodman's was robbed, or the theft occurred at -- excuse me -- Rodman's Drug Store, located at 218 N. Frederick, does not substantiate that the defendant here was involved in the robbery.

Now then, we go into the next step. The reliability of the officer who states that Rodman's was robbed is not in question. The reliability of the informant who says that the robber sold the stolen merchandise to the defendant is the key issue.

THE COURT: Agreed. All right, I feel the Schoeneman case -- indulge me a moment, while I read it.

MR. BROWN: Yes, Your Honor.

THE COURT: I have read the Schoeneman case. It is as represented by Mr. Brown, a case in which there was a delay of a hundred and seven days between the time that the documents were last seen in the co-defendant's premises, and the date of the application. The quotations also appear to be accurate.

The documents there involved were classified documents. That is, classified material which could not be in the possession of the defendant, without violation of law. They were, therefore, contraband. They purported to describe how the Government intended -- the Navy Department intended to procure contracts or certain types of contracts.

It seems to me that Schoeneman is distinguishable for two reasons. Firstly, the materials were contraband, not

evidentiary, as would be the nature of the documents in the case at bar. More specifically, the documents in Schoeneman were contraband, and further, were of a type, insofar as the opinion shows, a type where their utility, insofar as predicting what type of contracts the Navy Department would be interested in negotiating, were of a relatively limited period of time. And, apparently, the Court concluded that, at least insofar as the face of the affidavit was concerned, there was no showing that those documents had any current usefulness, insofar as documents were concerned.

The Government makes the point here -- it seems to me, a point well taken -- that the documents described by the instant search warrant were documents that were kept in the regular course of business by the three corporations. Documents which a business would be expected to have and would be expected to retain for several years. For the reason, among other things, to support tax reports and to have available, in case of an audit. And, there would be records with regard to sales taxes and other types of materials that would be required by law.

So, while there is no allegation in the affidavit that the records were still available, and no expiration as to why such conclusion obtained, it seems to me that, if the affidavit otherwise presanted probable cause and showed that stolen merchandise was being purchased, that an on-going

business would still, probably, probably retain such records.

It also seems to the Court that another circumstance might well be taken into consideration. Schoeneman was a case in which the Court spoke of there being a required, a predicate for the intrusion that a search warrant constitutes. And, apparently, in Schoeneman, the officers resorted to a search warrant.

In this case, the Government tried, according to the face of the affidavit, to proceed by subpoena, by grand jury subpoena. And, the affidavit sustained the inference that an effort was being made to avoid production of the documents.

So, the Court cannot conclude that there was, in this case, as there was in Schoeneman, a resort to the criminal process; namely, a search warrant based upon information which did not support a probable inference that the documents were still present. I believe that Schoeneman and Brinklow are reconcilable and the reconciliation lies, among other things, as Brinklow explains, on the nature of the items which -- to which the search warrant is directed.

I would not conclude, therefore, that Schoeneman is a controlling case. By the way, it's a case from our D.C. Circuit Court of Appeals.

MR. BROWN: May I address the Court on some matter, before Your Honor concludes his ruling?

THE COURT: Yes.

MR. BROWN: Your Honor, if we read the affidavit of Officer Johnson, we see that the subpoena was issued on August 10th, 1978. That it allowed no time for it to be served, no reasonable time for it to be served.

THE COURT: I believe it says it was issued on August 8th, Mr. Brown. It was -- service was attempted on the 10th.

MR. BROWN: Right, all right, that's the first time the defendant would have known that there was an attempt to be served. And, four days of issuance of a summons upon an individual. They could have served it -- it was directed toward the corporation. They could have served it upon any officer of the corporation, then and there present. They didn't have to find Jimmy Piccolo. They could have served it upon anybody they found with that subpoena.

But, I would like to refer the Court to a Supreme Court case which held that, thirty days -- I mean, let me read this case to Your Honor. S-g-r-o-e v. United States, 287 U.S. 206, 1972, held that while the statute does not fix the time for which proof of probable cause must be taken by the judge or commissioner, it's manifest that the proof must be a fact so closely related to the time of the issuance of the warrant as to justify a finding of probable cause.

The timing of the issuance of the warrant in this

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case, Your Honor, is so far removed, and, I don't think that Brinklow constitutes good law insofar as books and records.

THE COURT: I think otherwise, Mr. Brown. It seems to me that if what was targeted for a search warrant were a fixture of a business, a real estate fixture, something affixed to the premises, and the business necessitated the existence of that fixture, obviously, a passage of a hundred and seven days would not, it seems to me, suggest that that business, which, if it is otherwise operating, is no longer without that fixture which was attached to the real estate, and which the business depends upon for its operation.

Now, the question is whether these records are more like the fixture than they are the --

MR. BROWN: Contraband. That is --

THE COURT: -- the contraband.

MR. BROWN: That's precisely the point, Your Honor.

THE COURT: And, I repeat, that these items are business fixtures, not real estate fixtures, but business fixtures. They are the books out of which a business operation necessarily depends. And, I also believe that the attempt to issue the grand jury subpoena, that is, the issuance of it and the attempt to serve it, also impacts upon the question of staleness.

In any event, it seems to me that the question comes down to whether the case is controlled by Aguilar. And, the

Court is of the opinion that this is not Aguilar. Nor its progeny.

MR. BROWN: May I add one more point and then I will sit down, Your Honor?

THE COURT: Yes, sir.

MR. BROWN: If Your Honor will look at attachment number one to the search warrant --

THE COURT: Yes, sir?

MR. BROWN: -- there isn't a single document that is left out of that application. It's a schedule of documents that they wanted. And, if Your Honor can tell me the nexus of these documents to the crime, such as a corporate seal, a copy of --

THE COURT: Mr. Brown, I must interrupt you. I have held that the breadth of the search warrant was not legitimately raised by the motion. So, you have your record on that. And, the Court is ruling that that is not properly before the Court.

MR. BROWN: I would like to then say, Your Honor, I don't believe that even any of the documents raised probable cause, the information of the informant, without hearing from the officer that they raised the information that the informant had knowledge of the documents.

THE COURT: The Court holds that this -- these search warrants are not flawed by the requirements of Aguilar

and Spinelli. The informant, who is described as being reliable -- which descriptive term the Court believes to be of no value, whatsoever, for the purposes of assessing the probable cause -- this reliable informant, so-called reliable informant, stated on July 20th, 1977, that it had stolen, or that there -- excuse me. The informant had contacted Corporal Alben. And, this is double hearsay.

The informant had stated that merchandise was stolen from Rodman's in Gaithersburg and was sold to an individual by the name of Jimmy in the area of Half and Q. St., S.W., in the District. Jimmy was said to have been riding a 1977 Cadillac. The registration was stated. That tip, or that information, was verified by the police records of Montgomery County. In addition, that a theft had so occurred at Rodman's, in Gaithersburg, at the address described.

I do not think that that information alone would amount to probable cause. But, there is more information.

The affiant met with two individuals described as W-1 and W-2. And, more detailed information was forthcoming. The purchaser of the equipment, or the items stolen, was identified as the defendant. His position with the corporation was stated, as was the address involved. The type of items which were stolen, and sold, purportedly, were identified. And, it was stated that the sales occurred during the period February, 1977, until April 1, 1978. Which brings the

information down to a period of four and a half months to the application for the indictment. A sizable gap.

On August 11th, 1977, according to the affidavit and, the magistrates could conclude that there had been a theft from People's, from a People's store in Gaithersburg; W-2 was the one who reported this. The items that were stolen were a C-B scanner and two pocket calibrators and an unknown quantity of Polaroid film.

On the evening of August 11th, the detective, the affiant, actually saw W-1 in the presence of the defendant at 811 Market Space, N.W., which is one of the addresses of Souvenir City. So that there was a verification that W-1 did have dealings with the defendant. The reliability of the information was further bolstered when the defendant was seen to drive away in the designated Cadillac. And further, the reliability of the information was demonstrated by the theft having been reported from People's in Gaithersburg.

The reliability is further bolstered by the circumstance that W-1, by admitting the theft in Maryland, and the bringing of the merchandise in the District of Columbia, was incriminating himself as to illicit activities in both jurisdictions.

The plurality opinion in United States against Harris, reported at 403 U.S. 573 indicates that an informant who incriminates himself -- perhaps the matter ought to be

stated in the following manner:

That incrimination by an informant is an inditia of reliability. So that there was verification of the reliability of the informant, both with respect to July 20th, 1977, and with respect to August 11th, 1977. And, one transaction reinforced the other.

Also, with respect to the self-incrimination of the informant and also with respect to the affiant's own observations on August 11th, 1977.

Also, it seems to me that some reliance could be placed -- not a great deal for this purpose, but -- some reliance could be placed by the judge who issued the search warrant upon the circumstances of the grand jury subpoena, its issuance, and the attempt to serve it.

The Court concludes that there was probable cause and that the probable cause appears on the face of the affidavit, sufficient to justify the issuance of the search warrant. And, the Court has already held that the information, notwithstanding the gap, did permit a conclusion by the judge, the issuing judge, that the documents were probably still on the premises. Accordingly, the motion to suppress will be denied.

Now, have you had an opportunity, Mr. Gordon, to study the defendant's recent submission on the matter of eavesdropping?

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

CRIMINAL DIVISION

UNITED STATES OF AMERICA

v. Criminal Action No. 4047-78

JAMES M. PICCOLO,

Defendant.

Washington, D. C.

Thursday, February 22, 1979

The above-entitled action came on for a motion before the Honorable LEONARD BRAMAN, Associate Judge, in Courtroom Number 27, commencing at approximately 10:49 a.m.

THIS TRANSCRIPT REPRESENTS THE PRODUCT OF AN OFFICIAL REPORTER, ENGAGED BY THE COURT, WHO HAS PERSONALLY CERTIFIED THAT IT REPRESENTS HER ORIGINAL NOTES AND RECORDS OF TESTIMONY AND PROCEEDINGS OF THE CASE AS RECORDED.

APPEARANCES:

On behalf of the Government:

STEVEN GORDON, Esquire
Assistant United States Attorney

On behalf of the Defendant:

BENJAMIN BROWN, Esquire
Washington, D. C.

Kathleen L. Albrecht
Official Court Reporter

Telephone 727-1769

CROSS EXAMINATION

BY MR. BROWN:

Q Detective Alban, did you inverview Mr. Sutherland?

A Yes, sir.

Q Does he have a nickname?

A Rocky, sir.

Q When you interviewed him, how did you handle the interview; was it recorded?

A No, sir.

Q At no time did you record Rocky?

A There may have been one time that he called on another matter. Rocky was into Dilaudid, and his speech was slurred. And I asked him at that time would it be all right if I taped it because I could hardly understand him. But that would be a different matter altogether.

Q Can you tell the Court when that was recorded?

A When, sir?

Q When it was recorded.

A If I can refer to my notes, I think --

Q I have no objection to you referring to your notes.

THE COURT: You may.

A I believe, according to my notes -- the reason I say so, because my notes are generally narrative. These are with number one, two, three four. On July 6, 1977,

between 10:30 and 11:15, which would be a.m. And I transcribed them immediately from the tape and cleared the tape.

BY MR. BROWN:

Q When you say his speech was slurred and that was the reason you recorded it in your dealings with Rocky, was that because of his narcotic addiction?

MR. GORDON: Objection, Your Honor. I believe that that's outside the scope of the issue of -- the issues properly before the Court.

THE COURT: It would seem so, Mr. Brown. The objection will be sustained.

BY MR. BROWN:

Q What happened to the tape, Mr. -- Officer?

A It was immediately -- I played the tape, wrote down on a yellow pad what I had -- what he had said, and numbered it, and then I cleared the tape through a magnetic clearer.

THE COURT: In other words, you -- did you have the tape transcribed?

THE WITNESS: I did it myself to handwritten notes and then the notes were subsequently typed.

THE COURT: Were your notes a summary --

THE WITNESS: Yes, sir.

THE COURT: -- of the tape as distinguished from a verbatim --

MR. GORDON: Objection, Your Honor.

THE COURT: It's too early for me to set firm boundaries, Mr. Gordon. It seems to me that this question is relatively innocuous. I'll allow it and see where we go from here.

A First time that I personally talked to Dale Sutherland, August the 10th of 1977.

BY MR. BROWN:

Q At that time where did you see Mr. Sutherland?

A In my office.

Q Did he come into your office?

A No, sir.

Q Was he brought to your office?

A Yes, sir, he was.

Q How was he brought to your office?

A He was riding in a vehicle.

THE COURT: I don't know where we're going from here, Mr.--

MR. BROWN: I would like to bring out -- all right, Your Honor. If I can, I would like to bring out a certain conversation that is alleged to have taken place. And it's part and parcel -- nothing but wiretap, that's all we're discussing today. It is directly related to body recordings.

THE COURT: All right, I'll allow you to go somewhat further.

THE COURT: Which man?

THE WITNESS: Mr. Sutherland. I did not get into at that time, to the best of my recollection, any discussion of specific cases.

BY MR. BROWN:

Q Now, with respect to tape recordings, body recordings, had you spoken to Detective Franek at that time about the arson investigation involving Mr. Piccolo?

A I was completely unaware of the arson investigation in any terms until sometime late in September.

THE COURT: Of '77?

THE WITNESS: 1977, Your Honor.

BY MR. BROWN:

Q Did Mr. -- Detective Franek, that is, excuse me, did he discuss with you at any time subsequent to August 10, 1977, the investigation of Mr. Piccolo regarding the arson?

MR. GORDON: Your Honor, I believe that question has just been answered by the detective, unless I misunderstood the question.

THE COURT: No, it wasn't directly. He said that he remained ignorant of the arson until September, 1977. That doesn't necessarily mean that he spoke with the -- Detective Franek at that time. He may have come into -- have been privy to information from other sources.

THE WITNESS: The question?

THE COURT: Put a fresh question.

MR. BROWN: May I, Your Honor.

BY MR. BROWN:

Q When did you -- let's put it this way. When did you first speak to Detective Franek about the arson investigation?

A I spoke to Detective Franek sometime late in September or early in October. Simply -- he simply mentioned that they had an ongoing arson investigation that appeared to be bearing fruit, so to speak. At which time, we suspended our investigation.

Q Did you tell -- excuse me -- did Detective Franek tell you that he had put a body recorder on Rocky, known as Mr. Sutherland?

THE COURT: When?

BY MR. BROWN:

Q At that time, at that particular period of time.

A No, sir, I don't recall that he ever told me that he had put a body recorder on Mr. Sutherland; no.

Q Now, in your conversations with Mr. Sutherland, did he tell you that a body recorder had been placed on him?

THE COURT: At which time?

BY MR. BROWN:

Q During the period of the investigation.

A During the period -- if Your Honor I'm a little

of Mr. Sutherland, at this time.

THE COURT: Mr. Brown?

CROSS EXAMINATION

BY MR. BROWN:

Q Mr. Sutherland, your nickname is Rocky?

A Yes.

Q Directing your attention to August of July of 1977, did you have a conversation with a police officer named Almond of the Montgomery County police department?

THE COURT: Albans?

MR. BROWN: Almond -- Alban, Alban.

A To answer that question I'll have to say no.

BY MR. BROWN:

Q Did you ever have any conversations with Detective Alban on the telephone?

A I know no Detective Alban.

MR. GORDON: Your Honor, I think I can straighten this up if -- I believe that the individual --

THE COURT: Well, I don't know whether Mr. Brown wants you to straighten anything out.

MR. BROWN: I'm quite satisfied.

THE COURT: You'll have the opportunity to redirect.

MR. GORDON: Fine, Your Honor. I'm not in any attempt trying to be happy to limit it to that. I was

IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

CRIMINAL DIVISION

UNITED STATES OF AMERICA, Plaintiff, v. JAMES M. PICCOLO, Defendant.	Criminal Action Number F-4047-78

Washington, D. C.
Wednesday, 6 June, 1979.

The trial of the above-entitled action was resumed before the HONORABLE LEONARD BRAMAN, Associate Judge, and a jury duly empaneled and sworn, in Courtroom Number 31, commencing at 1:47 p.m.

THIS TRANSCRIPT REPRESENTS THE PRODUCT OF AN OFFICIAL REPORTER, ENGAGED BY THE COURT, WHO HAS PERSONALLY CERTIFIED THAT IT REPRESENTS HIS ORIGINAL NOTES AND RECORDS OF TESTIMONY AND PROCEEDINGS OF THE CASE AS RECORDED.

APPEARANCES:

On behalf of the Government:

STEVEN GORDON, Esq.
Assistant United States Attorney

On behalf of the Defendant:

BENJAMIN BROWN, Esq.
GERALD ROBBINS, Esq.
Washington, D. C.

Edwin K. Putnam
Official Court Reporter Telephone 727-1767

1977, the later part -- I mean the early part of 1978, I may have mentioned it to him -- I may have, I can't say that as a fact.

BY MR. BROWN:

Q But that was after you had stopped doing business with him, isn't that a fact?

A No, I believe I did business with him maybe two months prior to May 1st, or -- I didn't do any business with him after I entered my plea on the arson case.

Q Pardon me?

A I did not do any business with Mr. Piccolo after my plea on the arson case.

Q And when was that?

A I do not recall.

Q Isn't it a fact that you didn't do any more business with Mr. Piccolo after 1977, that your business and Mr. Piccolo was through in 1977?

A No, I did business with Mr. Piccolo in 1978, also.

Q Do you remember when?

A No, I -- no, I couldn't tell you the month, Mr. Brown.

Q All right, do you remember ever telling Mr. Piccolo that you had been set up by someone?

A I did.

Q Will you tell the Court and jury who you told Mr.

THE WITNESS: That off street.

And carry the stuff into the store.

BY MR. GORDON:

Q And where would you stay?

A Sometimes I was in the truck, sometimes I got out and went and got what we was going to eat, or et cetera.

At the beginning, I didn't even go to the store with him.

Q Did you ever go into the store together with Bo and actually be present when the sale was consummated?

A I don't think so.

Q Any particular reason for that?

A Well, at the beginning, I didn't know Piccolo.

Q When did the point in time come that you did know Mr. Piccolo?

A Well, I didn't actually know him. I was in the truck and I would usually sit in the truck, but one night we were coming back from Virginia, Bo had -- well, what Bo told me is that he owed him money --

MR. BROWN: I object, Your Honor; what Bo told him.

MR. GORDON: Your Honor, may I make a brief proffer at the bench?

THE COURT: Very well.

Well, this might be a convenient place to excuse

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

CRIMINAL DIVISION

UNITED STATES OF AMERICA :

v. : Criminal Action No. F 4047-78

JAMES M. PICCOLO, :

Defendant :

Washington, D. C.

Wednesday, June 6, 1979

The above-entitled action came on for a jury trial before the HONORABLE LEONARD BRAMAN, Associate Judge, in Courtroom Number 31, commencing at approximately 10:05 a.m.

THIS TRANSCRIPT REPRESENTS THE PRODUCT OF AN OFFICIAL REPORTER, ENGAGED BY THE COURT, WHO HAS PERSONALLY CERTIFIED THAT IT REPRESENTS HER ORIGINAL NOTES AND RECORDS OF TESTIMONY AND PROCEEDINGS OF THE CASE AS RECORDED.

APPEARANCES:

On behalf of the Government:

STEVE GORDON, Esquire
Assistant United States Attorney

On behalf of the Defendant:

BENJAMIN BROWN, Esquire
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Washington, D. C.

Ms. Jewel F. Irving
Official Court Reporter 727-1766

at that time, so I would either borrow the money, I needed for a shot. I very seldom go in the store when I was sick. After I got my shot, I would go out and hit a few shopping centers and come back and sell my merchandise. By that time, I would need another shot, and I would go out and sell it -- average two trips a day, some days, three trips.

Q Coming back and selling the goods in between?

A Yes, sir.

Q And getting more narcotics?

A Yes, sir.

Q Where were you selling the goods, sir, was it in the suburbs, or in the District of Columbia?

A Both.

Q And how about your narcotics, where were you obtaining those, sir?

A In the District.

Q Were there particular areas in Maryland that you would attempt to hit, or did you move around?

A Well, it has been the general practice for years to -- I have more or like I have a route, different routes that I go by so that I generally go into a store once every two weeks, so that I don't go in the same store too regular.

Q Did you ever take other individuals with you when you went on your boosting trip, sir?

A Occasionally.

Q Directing your attention, specifically, to that year, 1977, the period between March and August, can you name any individuals that would accompany you occasionally, when you were doing your boosting?

A Yes, sir. At first, I didn't have any transportation, so Donald Cruz drove me.

MR. GORDON: Your Honor, for the record, Mr. Cruz' last name is spelled C-R-U-Z.

THE COURT: Very well.

BY MR. GORDON:

Q were there other individuals?

A Not during that time.

Q Was there subsequently other individuals?

A Yes, sir.

Q Who, sir?

A Dale Southerland.

Q Now, would you -- Did you ever take both Mr. Southerland and Mr. Cruz with you at the same time?

A Possible, I couldn't say for sure, I would imagine I had, you know, on a few occasions.

Q You stated that originally you needed transportation from Mr. Cruz, did there come a time when you got transportation of your own?

A Yes, sir.

Q And do you recall approximately when that was?

THE COURT: All right, let's proceed?

THE WITNESS: Well, let me explain like this, Mr. Gordon: When you are selling hot goods to a person, you don't come out and say this is stolen property, because a lot of people, as soon as you tell them that, they'll say, well, I'm not interested. So I didn't volunteer this information to Mr. Piccolo, nor do I recall that asked or not.

BY MR. GORDON:

Q When you first started bringing items to Mr. Piccolo, sir, how frequently were you bringing him items, as best you can recall?

A At first, maybe every other day, then later, maybe once a day and then later twice a day --

THE COURT: Wait a moment, sir? Initially, how often was it?

THE WITNESS: At first it was, maybe, every other day.

THE COURT: Yes.

THE WITNESS: Then it got to be once a day, then twice a day, and some days, three times.

BY MR. GORDON:

Q Why did your dealings with Mr. Piccolo become more frequent, sir?

MR. BROWN: I object, Your Honor.

THE COURT: Overruled.

THE COURT: -- all in cash?

MR. GORDON: Yes, Your Honor. Amounts of the transactions, Your Honor, dollar amounts on some of these transactions, we believe, will be highly relevant because they will show, for example, $144, which is precisely what you would get for a case of magic cubes. On other occasions, 72, or other multiples of 12. On some of these occasions, Your Honor, there is notations on the business records that the money was paid for cubes or magic cubes.

THE COURT: Mr. Gordon, is it part of the Government's theory that the price was disproportionate?

MR. GORDON: Yes, Your Honor, that is part of the Government's theory, although, not -- I would be candid with the Court, not a major part, because the -- Well, the dollar figures multiply when you start talking about the total amounts, but on each individual item, of course, the difference, while disproportionate, is not the huge amount per item. But that is, indeed, part of the Government's case.

THE COURT: You mean that while a fair consideration may have been paid for some of the items that were sold in that particular transaction, that the total for all of the items was disproportionately low?

MR. GORDON: No, I think I misspoke myself a bit, Your Honor. Our position is that the value as to any item, was less than what Mr. Piccolo could get it through litigitimate

A A dollar for the majority of them -- The majority of them was a dollar and some of them which was heavy material, a dollar -- between a dollar and a quarter and a dollar and a half.

Q Were there other occasions on which you solicited Mr. Piccolo for other types of merchandise outside of the film and the flash cubes and T-shirts?

A Well now, I'll explain it like this, Mr. Gordon: A lot of times I had a lot of other merchandise with me, which I would ask him if he was interested in it. It may be appliances, or radio, or television, or something of that nature. Now I can't go into detail as to which items that he bought, you know, which weren't the general type of items, but I mean, he bought a couple of calculators, one time, pocket-type calculators.

As far as the scanner is concerned, I vaguely -- I remember the scanner, but it seems to me it was a package deal that Southland took on the store, rather than me on that occasion, which was unusual. And another time I sold him a typewriter.

Q Tell me about the typewriter?

A I sold him the typewriter and I would assume it was in July, because I took it to his warehouse -- his fireworks warehouse in Southwest.

Q Do you recall whereabouts in Southwest his fireworks warehouse was located, sir?

IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

CRIMINAL DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

JAMES M. PICCOLO,

Defendant.

Criminal Action

Number F-4047-78

Washington, D. C.
Thursday, 7 June, 1979.

The trial of the above-entitled action was resumed before the HONORABLE LEONARD BRAMAN, Associate Judge, and a jury empaneled and sworn, in Courtroom Number 31, commencing at 11:09 a.m.

THIS TRANSCRIPT REPRESENTS THE PRODUCT OF AN OFFICIAL REPORTER, ENGAGED BY THE COURT, WHO HAS PERSONALLY CERTIFIED THAT IT REPRESENTS HIS ORIGINAL NOTES AND RECORDS OF TESTIMONY AND PROCEEDINGS OF THE CASE AS RECORDED.

APPEARANCES:

On behalf of the Government:

[As hereinbefore noted.

On behalf of the Defendant:

[As hereinbefore noted.]

Edwin K. Putnam
Official Court Reporter Telephone 727-1767

Piccolo on on a fairly regular basis?

A There was other things that we took him. It was souvenir pamphlets, souvenir things, but it seemed he didn't want the souvenirs so much as -- there was -- I don't know how to describe them, but they're plates that's got some type of medallion or -- I don't know what you call them, they're -- there's twelve months of the year and each one of them was for each month --

THE COURT: The Zodiac?

THE WITNESS: Zodiac. -- that he took him some trays of zodiacs, and I never took them personally,but Bo did.

BY MR. GORDON:

Q Now, on those occasions that you, yourself, dealt with Mr. Piccolo; in other words, when you actually went in and dealt with him, how were you paid?

A Cash.

Q Did you have lists with you on those occasions?

A The first time, I did. I believe, the one time I went in there, I'd hurt my foot, and I think I had a list that time. But the other times, I don't believe that I had a list because it was a very small amount, you know.

Q Did you ever give Mr. Piccolo a receipt for his money?

A No.

Q Yes, sir.

A No. It was removed.

[Simultaneously.]

Q What happened to it?

Who removed it?

A Either I or Bo.

Q Were there ever occasions that you can recall when they weren't removed?

A No.

Q Did you ever tell Mr. Piccolo where these goods were coming from?

A I don't remember telling him.

Q Did he ever ask you?

A I don't think the conversation between me and him ever lasted that long for me to tell him anything, you know. This is what it is, and I'd either tell him, like, the first time I told him Bo was locked up, you know, or -- if Bo's not there it was a reason for it. If -- sometimes I knew it, sometimes I didn't because he would rather sell it than I would and I'd rather him sell it and me to go there, anyway.

But it didn't -- there wasn't that many conversations, you know, to where -- they didn't -- they lasted much less time if I had took them in there than they did if Bo-Bo took them in there.

As far as me ever telling him that "Jimmy, here is

Q What happened after the employee took it out of the cash register?

A He handed it to Jimmy, or she handed it to Jimmy. I think it was a broad behind the counter.

Q In other words, it wasn't handed directly to you by that --

A No.

Q -- employee?

Mr. Sutherland, let me direct your attention at this time and ask if you recall a specific occasion on which you and Mr. Rodman had occasion to steal a specific item, namely, a typewriter. Do you recall such an occasion, sir?

A Yes, I do.

Q All right. Do you recall where that typewriter was stolen from?

A It was in Gaithersburg, Maryland. It was a Rodman's store. Exactly where in Gaithersburg, I don't know, but it was a Rodman's store. We had walked in the door and the typewriter was, like, at the back. We walked down the left side, into the store on the left side, and it was in the back on the right side; if we walked in on the right side, it was in the back on the left side.

I don't know which side we walked in.

Q But it was on the opposite side from where you walked in?

A Yes.

Q Okay. Now, what did you do after seeing the typewriter?

A Well, when we seen the move could be made to take it, if I recall correctly, either the cord wasn't there, or we had to get the cord from a different spot, we had to put the cover on it-but we got it.

Q What --

A We put the -- if I recall correctly, I believe we put the cover on it and we put it in a box? I can't believe we tried to walk out of there without it in a box, and so -- and I know we didn't put it in a wastepaper basket.

I would say that we put it in the box, in some kind of cardboard box that was in the store, because I can't remember carrying one in there, neither; and Bo carried it out and put it in the truck.

Q Okay. What happened to the typewriter after it was taken out of that Rodman's Drugstore?

A You mean after we put it in the truck?

Q Yes, sir.

A It stayed in the truck until later that night when we brought it into the District of Columbia.

Q Whereabouts in the District of Columbia did you go with that typewriter?

A First, we went to Jimmy's store.

BY MR. GORDON:

Q Mr. Sutherland, at this time I'd like to show you what's been marked for identification as Government's Exhibit Number 16 and ask you, first of all, sir, can you say whether or not that item -- Strike that.

First of all, sir, for purposes of the record, would you describe what that item is?

A Calculator.

Q Okay. Now, can you tell us, sir, whether that calculator is exactly one of the same ones that you and Bo stole out of the Peoples Drugstore that night?

A No.

Q Let me ask you this, sir. Does that calculator resemble the calculators you recall stealing out of the store that night, or is it different from it?

A It looks like one of them, but I've stole so many of these there's no way for me to know.

[A pause.]

Q Mr. Sutherland, did you have occasion on the same day that the calculators, the scanner and the film was stolen, or shortly thereafter, to contact another law enforcement official and inform them about that theft and the subsequent sale of those items?

A Yes.

Q Do you recall when you did that, sir?

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

CRIMINAL DIVISION

UNITED STATES OF AMERICA :

v. : Criminal Action No. F 4047-78

JAMES M. PICCOLO, :

Defendant :

Washington, D. C.

Thursday, June 7, 1979

The trial in the above-entitled action was resumed before the HONORABLE LEONARD BRAMAN, Judge, and a jury empaneled and sworn, in Courtroom Number 31, commencing at approximately 3:25 p.m.

THIS TRANSCRIPT REPRESENTS THE PRODUCT OF AN OFFICIAL REPORTER, ENGAGED BY THE COURT, WHO HAS PERSONALLY CERTIFIED THAT IT REPRESENTS HER ORIGINAL NOTES AND RECORDS OF TESTIMONY AND PROCEEDINGS OF THE CASE AS RECORDED.

APPEARANCES:

(As heretofore noted.)

Ms. Jewel F. Irving

Official Court Reporter 727-1766

A Yes, sir, I did.

Q At that point in time on July 13th, 1977, did Mr. Sutherland tell you that he was also engaged in a daily boosting operation in Montgomery County?

MR. GORDON: Objection, Your Honor.

THE COURT: I'll overrule the objection, but there is just so much of this, Mr. Brown -- Excuse me, ladies and gentlemen. There is just so much of this that can come in in this form, as proper within the scope of cross examination. But the objection is overruled at this time.

THE WITNESS: What is the question, sir?

MR. BROWN: Would the reporter please read the question?

(Thereupon, the reporter read back the last question.)

THE WITNESS: No, sir, not on that date.

BY MR. BROWN:

Q Did Mr. Sutherland tell you who had taken the typewriter?

A Yes, sir, he did.

Q Did he tell you that he was present when the typewriter was stolen?

A No, sir, he did not.

Q Did he tell you that he knew where the typewriter had gone?

A Not on that day, sir.

Q When did he call you the next time?

A He called me again at 6:35 p.m. the same day.

Q And what did he tell you at that time?

A Among other things that were not related to this particular incident, he did say that the owner of Souvenir City is a fence who specializes in T-shirts, film and flash bulbs; that Bo Bo Redman fences there regularly; Redman is purchasing and operating a white pick-up, Maryland registration, M as in Mary, 11161.

THE COURT: Whose tag was that?

THE WITNESS: He said Mr. Redman was operating a white pick-up with Maryland registration M as in Mary, 11161. I later obtained listings on these tags.

BY MR. BROWN:

Q Had you prior to July 13th, entered into any agreement, written or oral, to reward Mr. Sutherland for his information furnished to you or other members of the Montgomery County Police Department?

A Yes, sir, I did.

Q What was that agreement?

A Basically I would pay him for information. We were interested in someone else at the time, but it would -- I would determine its worth, et ceterra, and between myself and my supervisor what we would pay him.

Q So that when he was telling you that Mr. Redman or anybody else was boosting, he would come to you and receive

remuneration for that information, is that correct?

A Not particularly, no, sir. Periodically he would call me up and tell me he would need money, or I would meet him here in the District of Columbia in a bar and I would pay him. But generally I tried to verify all the information that he did give me.

Q All right. Now who did you contact in the District of Columbia --

MR. GORDON: Objection, Your Honor.

THE COURT: Let me have a full question, for the record, so that I can rule upon it?

BY MR. BROWN:

Q Who did you contact in the District of Columbia to inform him of the information you had received from Mr. Sutherland?

MR. GORDON: Same objection, Your Honor.

THE COURT: It is beyond the scope, Mr. Brown.

MR. BROWN: May we approach the bench, Your Honor.

THE COURT: Yes, sir.

(Thereupon, the witness stepped down from the witness stand; counsel for both parties approached the bench and conferred with the Court, as follows:)

MR. BROWN: Your Honor, if you recall, in the beginning of this case with regard to the suppression, Mr.

Johnson is testifying that he had a reliable informant. We are trying to establish at this point in time that the reliable informant was Sutherland to Alban, to Johnson, and that would never have supported the original issuance of the search warrant that was issued by this Court. And I think we have a right to inquire for any of the evidence seised, how it was gotten. We'll tie it in with Mr. Johnson when he takes the stand. And I believe that this is proper and admissible.

THE COURT: I don't intend to open up the motion to suppress, that isn't before us and that isn't before the jury. The objection is sustained.

MR. BROWN: Pardon me -- We'll get to that.

(Thereupon, the proceedings had at the bench were concluded; counsel returned to their seats at counsel table; and the witness returned to the witness stand and testified further, as follows:)

THE COURT: Thank you, sir.

BY MR. BROWN:

Q Subsequent to July 13th, 1977, when did you next speak to Mr. Sutherland?

MR. GORDON: Objection, Your Honor.

THE COURT: Again, this goes beyond the scope of direct.

MR. BROWN: I don't believe that the Government may

appear unless the notice is reasonable.

Your next witness.

MR. GORDON: Your Honor, the Government calls Detective Roger Johnson.

THE DEPUTY CLERK: Would you come forward, sir? Would you stop and raise your right hand?

Thereupon,

ROGER ALLEN JOHNSON

having been called as a witness for and on behalf of the Government, and having been first duly sworn by the Deputy Clerk, was examined and testified, as follows:

MR. BROWN: Your Honor, may we approach the bench on the prior witness, I have --

THE COURT: Yes.

(Thereupon, counsel for both parties approached the bench and conferred with the Court, as follows:)

MR. BROWN: I was under the impression that we had had Corporal Alban's notes, but we didn't get them.

THE COURT: I can't hear you.

MR. BROWN: I was under the impression that we had Corporal Alban's notes, but we don't have them, and I would like to make a request that they be given to us as soon as practicable, so I may prepare for his next trip back.

MR. GORDON: Your Honor, I'm sure I gave counsel a

copy of Corporation Alban's notes for the motions hearing. I would be happy to get another copy of his notes regarding the conversation that he testified to and make those notes, but no others, available to Mr. Brown and Mr. Robbins. Your Honor, I would be certainly happy to do that.

MR. BROWN: Well, I'm satisfied -- I'm sorry. I'm satisfied that inasfar as it goes, but it may be that there may be some Brady materials in his other notes.

MR. GORDON: Your Honor, I'll state to the Court that I reviewed those notes previously, and I found nothing in there that even approached Brady.

THE COURT: You are entitled to see what he refreshed his recollection on. If it were asked, I would have certainly permitted you to do that, you didn't ask. But I think that Mr. Brown should be given a copy of that material and a copy of the other material that he furnished.

MR. GORDON: Your Honor, I would be happy to have a copy of all of the Detective's notes -- I would be happy to do that, Your Honor. I would be happy to give Mr. Brown a copy of all of the Detective Alban's notes relating to conversation with Mr. Sutherland and including any payment made to Mr. Sutherland for information on Mr. Redman, not information on other individuals.

MR. BROWN: That's all I really asked for.

THE COURT: All right, let's move.

(Thereupon, the proceedings had at the bench were concluded; counsel returned to their seats at counsel table, and the trial was resumed, as follows:)

DIRECT EXAMINATION

BY MR. GORDON:

Q Speaking in a loud and clear voice so that all the ladies and gentlemen of the jury can hear you, would you please state your name, your rank and duty assignment?

A Roger Allen Johnson, Detective, Investigative Services Division, Major Crimes Branch, Metropolitan Police Department.

Q Detective Johnson, how long have you been a member of the Metropolitan Police Department?

A Ten years.

Q How long have you been assigned to the Investigative Services Division?

A Since August the first of 1976.

Q Detective Johnson, in the course of your duties with the Metropolitan Police Department, did you have an occasion at any point during the summer of 1977 to engage in surveillance of a souvenir shop known as Souvenir City, which is located at 811 Market Place, Northwest, here in the District of Columbia?

A Yes, I did, sir.

Q Did any other members of the Police Department accompany you in those surveillances?

A Yes, they did, sir.

Q What other members, sir?

A Sergeant Jimmy Davis, Detective Conwell Freeman, and Detective Paul Brennan.

Q On how many occasions, sir, were you personally involved in surveillances of that Souvenir City store?

A I was personally involved in approximately five -- five separate occasions.

Q And during what period of time are we talking about, sir?

A We are talking about July and August of 1977.

Q Can you recall the specific dates involved, or any of the specific dates involved?

A Specific dates involved would have been August the 11th, 1977, August the 20th, 1977, and August the 30th, 1977.

Q All right. Beyond those three, where you recall specific dates, were there any other surveillances for which you cannot recall specific dates at this point?

A Yes, there were, sir.

Q Approximately how many?

A At least two.

Q And can you tell us approximately when they would have taken place, sir?

A It would have taken place either in late July or during the month of August.

Q At what time of day or evening were these surveillances conducted, or did the times vary, sir?

A We conducted the surveillances between 8:30 and ten in the evening. On each specific date, it varied slightly, but always in that time frame.

Q Now, at that time -- On any of those occasions when you were conducting surveillances, did you have occasion to see individuals whose identity you knew or later learned to be Coayle Redman or Dale Sutherland?

A Yes, sir. I did.

Q On how many of those occasions did you have the opportunity to see Mr. Coayle Redman?

A On all of them, sir.

Q On how many of those occasions did you have an opportunity to see Mr. Dale Sutherland?

A Two or three, not necessarily all.

Q Now on any of the occasions on which you were conducting surveillances, did Mr. Coayle Redman enter the store, Souvenir City?

A I believe on the August the 11th, and on August the 30th.

Q Did you have occasion to determine whether on those occasions Mr. James Piccolo was present in the store?

A Yes, sir.

Q Was he present?

A He was.

Q Now on those occasions that --

THE COURT: On both?

THE WITNESS: On both occasions, yes, sir.

BY MR. GORDON:

Q On those occasions when you observed Mr. Redman enter the store, did he have anything in his possession when he entered the store?

A I -- On August the 30th occasion, Mr. Redman carried in a box. We were simply too far away to determine what the box was, but he carried in a box.

Q Did he leave the store with that box?

A He left that store with several boxes.

Q How many did he enter with?

A One.

Q And he came out with several?

A With several.

Q How about on the other occasions, did Mr. Redman enter the store with anything?

A Not that I recall, sir.

Q Were you in a position to see what Mr. Redman did when he entered the store on those occasions?

A On the August the 30th date, I was in a position to

IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

CRIMINAL DIVISION

UNITED STATES OF AMERICA, Plaintiff, v. JAMES M. PICCOLO, Defendant.	Criminal Action Number F-4047-78

Washington, D. C.
Friday, 8 June, 1979.

The trial of the above-entitled action was resumed before the HONORABLE LEONARD BRAMAN, Associate Judge, and a jury duly empaneled and sworn, in Courtroom Number 31, commencing at 10:03 a.m.

THIS TRANSCRIPT REPRESENTS THE PRODUCT OF AN OFFICIAL REPORTER, ENGAGED BY THE COURT, WHO HAS PERSONALLY CERTIFIED THAT IT REPRESENTS HIS ORIGINAL NOTES AND RECORDS OF TESTIMONY AND PROCEEDINGS OF THE CASE AS RECORDED.

APPEARANCES:

As hereinbefore noted.

Edwin K. Putnam
Official Court Reporter Telephone 727-1767

PROCEEDINGS

THE COURT: Good morning, ladies and gentlemen.

THE JURY: Good morning.

THE COURT: Is the Government ready?

MR. GORDON: The Government is ready, Your Honor.

THE COURT: Is the defense ready?

MR. BROWN: Yes, Your Honor.

THE COURT: Detective Johnson, would you please resume the stand?

Thereupon

ROGER A. JOHNSON,

the witness under examination at the time of adjournment on the preceding day, resumed the stand, was further examined and testified, as follows:

THE COURT: Mr. Gordon?

MR. GORDON: Your Honor, I believe at the close of yesterday's business I had sought the Court's permission to publish to the jury the photo array which had been admitted into evidence.

Might that be done at this point?

THE COURT: I did rule that it was admitted as evidence.

Do you wish to publish it?

MR. GORDON: Yes, Your Honor.

THE COURT: Yes, you may publish it.

this particular case, receiving stolen property?

THE COURT: You mean, did Mr. Sutherland report to him instances which had to do with the theft and the receiving of stolen property?

MR. BROWN: Did they have any conversations, whether it was a report or anything, Your Honor.

THE COURT: Detective Johnson?

THE WITNESS: Yes.

BY MR. BROWN:

Q And my next question, then, was how many times.

MR. GORDON: Your Honor, I believe that's repetitious.

THE COURT: It is. Sustained.

BY MR. BROWN:

Q Did the story that Mr. -- when was the first time that you spoke to Mr. Sutherland, sir?

A The first time I spoke to Mr. Sutherland was the -- be the evening of August the 10th of 1977 and the morning of August the 11th.

Q Do you recall speaking to him in July at any time after Officer Alban had contacted you?

A No, sir; I do not.

MR. BROWN: If Your Honor will indulge me, please?

THE COURT: Yes.

[A pause.]

BY MR. BROWN:

Q When was the first time you had spoken to Detective Alban regarding this matter?

MR. GORDON: Objection, Your Honor.

THE COURT: Overruled.

THE WITNESS: I believe it was July the 20th --

MR. BROWN: All right.

THE WITNESS: -- of 1977.

BY MR. BROWN:

Q And did he advise you that he had had a report from someone about a crime being committed in the District of Columbia; is that correct?

A That is correct, sir.

Q All right. Now, did he tell you the name of his informant at that time?

A I don't recall whether he did or not.

Q Did you make any appointments with him to interview his informant after July 20th?

A Yes.

Q All right. Now, when did you first see the informant with Detective Alban after July 20th?

A I never did see the informant with Detective Alban, to the best of my recollection.

Q Did you see him alone?

A Yes, I did.

Q When was the first time you saw him alone?

A I have previously stated that the first time I saw him alone was on August the 10th, 1977.

Q All right. Now, when did you next see Mr. Sutherland?

A It was shortly thereafter, but I don't recall the exact date.

Q Did you talk to him at that time?

A Yes, I did.

Q And when did you next see him?

A I believe the next time I saw him was on August the 29th, 1977.

Q Did you talk to him at that time?

A No, sir; I did not.

Q Is that the night you arrested him and Mr. Redman, or seized the clothing?

A No, sir.

Q What night did you seize the clothing?

A The next night.

Q That was on the 10th?

A That's correct.

Q In whose possession was the clothing?

A The clothing was located -- the bulk of the clothing was located in the cab of the truck. At the time we stopped Mr. Sutherland and Mr. Redman, Mr. Redman was on

foot with, I believe, it was three of the garments, approaching various people offering them for sale, and I believe Mr. Sutherland was still in the cab of the truck.

Q Now, did he offer any of the clothing for sale in your presence?

THE COURT: Who?

MR. BROWN: Mr. Sutherland, excuse me.

THE WITNESS: Did Mr. Sutherland offer the clothes for sale?

BY MR. BROWN:

Q Any clothing for sale to people on the street, yes.

A Not that I remember.

Q All right. Now, you had a conversation at that time with Mr. Redman?

A Yes, sir. I believe I had a brief conversation with both he and Mr. Sutherland.

Q When did you next see Mr. Sutherland with regard to this particular case?

A I believe it's got to be sometime in April or May of 1978.

Q Between August the 30th, 1977 and May of 1978, you did not see Mr. Sutherland again; is that correct?

A I believe that's correct.

Q Were you present in an office with Mr. Redman and Mr. Sutherland, the District Attorney -- the Assistant

Redman -- Mr. Sutherland sometime in August of 1977. When did you then seek to obtain an arrest warrant for Mr. Piccolo?

MR. GORDON: Objection, Your Honor.

THE COURT: Overruled.

THE WITNESS: I would have to look at a copy of that original application on the --

MR. BROWN: I'll show you a copy of it, if I may. May I approach the witness, Your Honor?

THE COURT: Yes.

THE WITNESS: Now, you've handed me a copy of the search warrant from August the 11th, 1978 and with the attachments. Prior to this, I had drafted an arrest warrant sometime, possibly, during August, but I'd have t look at the document to be able to tell you.

THE COURT: August of what year?

THE WITNESS: Of 1977, sir.

BY MR. BROWN:

Q '77?

A I believe so.

Q Is this the affidavit you prepared in support of an arrest warrant, photocopy of it?

A It appears to be.

Q All right. What's the date?

THE COURT: Is it one in August of '77?

THE WITNESS: Yes, sir. I'm looking for a date on

the document at the moment.

[Following a pause:] The date on this -- the date of the offense on this is August the 11th, 1977. There is no date on it to indicate exactly when I prepared it. It was in reference to that incident, but it was -- there was a period of time between the actual offense and the time that I prepared the warrant.

BY MR. BROWN:

Q When did you --

THE COURT: Which incident was this, the August 11th?

THE WITNESS: If I may have the document, please?

[Mr. Brown tenders document to witness.]

THE WITNESS: Thank you.

This incident involved the theft of calculators and a CB scanner and an unknown quantity of Polaroid film from a Peoples Drugstore in Gaithersburg, Maryland, specifically, the Peoples Drugstore located at 19194 Montgomery Village Avenue in Gaithersburg, Maryland. It's located inside the Montgomery Village Shopping Center.

BY MR. BROWN:

Q Now, did you ever have an arrest warrant prepared between August 11th, 1977 and August 11th, 1978, signed by you and any proper authority, authorizing the arrest warrant?

A No, sir; I did not.

Q Did you ever attempt to serve an arrest warrant on Mr. Piccolo between August 11th, 1977 and August 11th, 1978?

A I attempted to obtain one, sir.

Q When?

A Probably, early September of 1977 --

Q Where is --

A -- late --

Q -- is a copy of that warrant?

A I have it right here in front of me.

Q Was that prepared in September of '77?

A It was prepared sometime in this time frame, yes, sir.

Q Did anybody sign it in that time frame?

A No, sir.

Q Is there any date in there on that time frame?

A There is no date, there is no place on a warrant affidavit to put the date of its preparation, sir.

Q All right. Now, when was that warrant ultimately signed by a proper authority, authorizing the arrest of Mr. Piccolo?

A This particular affidavit and this particular warrant were never signed.

Q Didn't you prepare an arrest warrant for Mr. Piccolo in August of 1978?

A I did, sir.

Q Wasn't it identical to this one?

A No, sir; it's not.

Q What's the change?

A I would have to see a copy of that particular affidavit in order to tell you exactly what the changes were.

MR. BROWN: May I have the document, please, sir?

THE WITNESS: Yes.

THE COURT: Yes.

Counsel, for the purposes of the record, the reader will not be enlightened as to what the purported draft of September '77 is. Perhaps it should be given an exhibit number.

If you follow me, Mr. Brown.

MR. BROWN: I do, Your Honor.

[A pause.]

MR. BROWN: Just before I get to that, Your Honor--

BY MR. BROWN:

Q You say this was prepared in September of '77?

A Approximately, sir.

Q All right. Do you know Stephen Morgan?

A Yes, sir; I do.

Q Who is he?

A He's formerly a clerk at the Peoples Drugstore located in the Montgomery Village Shopping Center in

THE COURT: You say that's the standard policy?

THE WITNESS: Yes, sir.

BY MR. BROWN:

Q When did you discontinue the investigation of this case, this particular case?

A The investigation was discontinued -- well, the investigation stage went right up to trial, sir.

Q Did there come a time when you ever suspended this case, suspended the investigation?

A Yes, sir; there did.

Q When was that?

A In September of 1977.

Q And will you tell the jury and the Court the reasons given for suspension of the investigation?

A Well, the reasons were two. Basically, we had presented this affidavit and it had been rejected, the affidavit for the arrest warrant, and Mr. Sutherland was caught doing things that he shouldn't.

Q Didn't you also question his reliability?

A The reliability as to his information; is that correct? Is that what you're asking?

Q I would like to show you, if I may --

MR. BROWN: May I approach the witness, Your Honor?

THE COURT: Yes.

BY MR. BROWN:

Q Can you identify that, Mr. Johnson, please?

A Yes, this -- these are photocopies of a -- a case summary which I had begun to prepare and, basically, they're not finished.

MR. BROWN: May this be marked as Defendant's Exhibit Number 2 for identification, please?

THE COURT: Yes.

Mark each page separately, 2A and so forth.

[Document referred to marked Defendant's Exhibits Nos. 2A, 2B, 2C and 2D for identification.]

BY MR. BROWN:

Q I read from the document which has been marked as Defendant's Exhibit 2C --

MR. GORDON: Your Honor, that's improper in and of itself, and I'd object. Mr. Brown has no basis for reading from those documents without a proper foundation, none of which has been laid and --

THE COURT: Well, I don't know what he was going to read.

Let me inspect the portion.

Step down, please.

[Thereupon, the witness withdrew from the stand and counsel for both sides approached the bench

and conferred with the Court in low tones of voice, out of the hearing of the members of the jury, which conference was reported but is not transcribed herein. Thereafter, counsel for both sides returned to their respective positions at the trial tables, the witness resumed the stand and the proceedings continued, as follows:]

BY MR. BROWN:

Q Officer Johnson, when you suspended the case in September, will you tell the jury the reasons -- reason or reasons why you suspended the investigation?

THE COURT: Well, he's already testified that there were two such reasons, the last of which was that Mr. Sutherland was caught doing things he shouldn't be doing.

BY MR. BROWN:

Q Was that -- All right. Now, wasn't there another reason, due to the unreliability of Mr. Sutherland at that time?

A Mr. Sutherland had been found to be dealing directly with Mr. Piccolo and not telling us about it, and that is why we suspended the investigation.

Q And is that why you called that unreliable?

A Basically; yes, sir.

[A pause.]

Q Going back to the August 11th, 1977 conversation with Mr. Sutherland, did he tell you the reason he was

calling you?

A Yes, sir; he did.

Q Would you please tell us what that -- what reason he assigned for calling you?

A He told me that he and Mr. Redman had been out in Montgomery County and had stolen some calculators and a CB scanner and some film and had transported them to 811 Market Space and sold them to Mr. Piccolo.

Q Did he assign any other reason to you?

A Not that I recall, sir.

Q Did he mention anybody else's name, other than Piccolo, Redman and himself?

A [A pause.]

Q Did he tell you that he --

THE COURT: What's your answer to the question?

THE WITNESS: I don't recall that he mentioned any other name, sir.

BY MR. BROWN:

Q Did he mention Corporal Alban's name at that time?

A He might have, but I don't recall whether -- my -- logically, my interest was in the information he could provide me.

Q Did he tell you that the scanner was sold to Mr. Piccolo at that time?

A To the best of my recollection; yes, sir.

A Yes, sir. I believe he was in the cab of the truck.

Q Now, you received a 'phone call from Mr. Sutherland later that night, around eleven?

A That's correct, sir.

Q At which time he told you about the Montgomery Village Mall incident?

A That's correct.

Q Did you tell Mr. Sutherland at that time, during that conversation, that you had seen him earlier that evening outside the Souvenir City store?

A Yes, I believe I did.

Q You already knew that he had been there before he called and told you about it?

A Yes, sir.

Q Now, when did you first start making records of your surveillance there at the Souvenir City store?

A On August the 11th, 1978.

Q Did you keep written records of your surveillances of the store from that date forward?

A I believe so, sir.

Q Now, you said that around September of that year, '77, you sought to obtain an arrest warrant for Mr. Piccolo; is that correct?

A That's correct.

Q All right. Were you able to obtain a warrant at that time, sir?

A No, sir; I was not.

Q I believe you stated you also suspended your investigation about that time?

A That's correct, sir.

Q Now, you stated that one of the reasons was because Mr. Sutherland was doing things he shouldn't have been doing. Would you explain to us what you mean by that, sir?

A On August the 29th, during a surveillance, we observed Mr. Sutherland carry packages -- I believe there were two of them -- into the 811 Market Space store and show the contents of those boxes to Mr. Piccolo. At that time, since we wanted to be close to confirm our identifications, we had to break off the surveillance.

Subsequent to that, I contacted Mr. Sutherland on the 'phone -- the following morning I contacted him on the 'phone and Mr. Sutherland informed me that he had not been out of the house the entire day, entire previous day because he had sprained his ankle and, indeed, the night before we had seen him limping, noticeably, as he went to go in the store.

Q Would it be fair to say you realized he wasn't being completely candid with you at that point?

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A Yes, sir.

Q Had he, up to that point, told you that he, himself, was engaging in any boosting activities?

A No, sir. He scrupuously avoided telling me.

Q What boosters did he name to you at that point?

A He had named Mr. Redman and Mr. Crews, and I can't believe that he has told me about any others. I don't believe that he told me about any others.

Q Now, when the investigation was suspended in September, for how long a period of time was it suspended, sir?

A It was suspended from the end of September to the beginning of April 1978.

Q As far as the police department was concerned?

A As far as my office was concerned; yes, sir.

Q Now, did the investigation resume in April of 1978, sir?

A It did.

Q Had some intervening circumstances -- had something occurred in the meantime to start the investigation up again?

A Yes, sir. There had been testimony given before a grand jury by Mr. Redman and by Mr. Donald Eugene Crews concerning their activities --

THE COURT: Wait a moment, sir. I don't think we

ought to have any reflection as to what Crews may have told the Grand Jury.

MR. GORDON: I agree, Your Honor. I'd be happy to-- to --

THE COURT: Yes; all right.

BY MR. GORDON:

Q Had Mr. Sutherland also testified before the Grand Jury in the interim?

A In the interim, I don't believe so, sir.

Q Now, did -- once the investigation was resumed from your point of view, did Mr. Sutherland subsequently testify before the Grand Jury?

A Yes, sir; he did.

Q And did Mr. Redman testify once more before the Grand Jury?

A Yes, sir; he did.

Q And at this point, did Mr. Sutherland admit that he had been doing some illegal things himself?

A Yes, sir; he did.

Q Did you do other things in furtherance of the investigation at that point?

A Specifically, sir, I'm not --

Q Did you interview other witnesses, sir?

A Yes, sir; we did.

Q Did you interview Mr. Morgan at that time?

THE COURT: Very well.

MR. BROWN: I'm going to another subject.

BY MR. BROWN:

Q Mr. Johnson, at the time of August 1977, the time of the information you had received, first, from Dale Sutherland, did he mention any other item other than a scanner and a calculator?

A If I may refer to the report for a moment, please.

[Following a pause:] Yes; he mentioned some film.

Q On the July 20th conversation with Mr. -- Corporal Alban of the Montgomery County Police Department, was any item mentioned at that time?

A Yes, sir; there was.

Q What was that?

A It was a Brother's typewriter, Brother's electric typewriter.

Q Have you ever seen the Brother's electric typewriter?

A No, sir; I haven't.

Q Have you ever seen a CB scanner?

A The -- I've seen CB scanners; yes, sir.

Q I'm talking about the CB scanner that was stolen.

A No, I've never seen that one, sir.

Q Have you ever seen any calculators other than the one you've identified of being stolen?

A In this matter, sir?

Q Yes, sir.

A No, sir; I haven't.

Q Have you ever seen any film involved in this matter that was stolen?

A No, sir; I haven't.

Q Have you ever seen any flashbars that were stolen?

A No, sir; I haven't.

Q Any flashcubes?

A No, sir; I haven't.

Q Have you seen any property in the possession of Mr. Piccolo that was reported stolen to you other than the item you've identified, the calculator?

A No, sir; I haven't.

MR. BROWN: I have no further questions, Your Honor.

THE COURT: If there is nothing further --

MR. GORDON: I have a few further questions, Your Honor, based on that questioning and they will all be relevant to what Mr. Brown has just gone through.

THE COURT: Gentlemen, I don't intend to permit a recycle of the questioning. Now, I'm going to limit you to strict redirect, Mr. Gordon. You may proceed on that basis.

MR. GORDON: Thank you, Your Honor.

RE-REDIRECT EXAMINATION

1201 Longview Drive
Woodbridge, Va. 22191
15 February, 1980

Benjamin B. Brown, Esq.
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Statement

Proceedings (bench conferences, etc.) had in Criminal Action Number F-4047-78, U. S. v. James Piccolo, 6-18 June, 1979.

304 pp, $1.50 pp:	$456.00
Less deposit received:	50.00
Balance:	$406.00

Thank you.

Edwin K. Putnam
Official Court Reporter

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E.K.P.

THE COURT: I don't intend to open up a voir dire of the search warrant again. I've ruled on that. That's not a question for the jury.

MR. BROWN: I understand.

THE COURT: It's a question for the Court.

MR. BROWN: Yes.

THE COURT: Now, the witness who was on the stand, it seemed to me, identified these as coming from the store.

MR. GORDON: That's correct, Your Honor.

THE COURT: Now, if that's the case, what's the reason for corroborating that?

MR. GORDON: Well, Your Honor, I think there's going to be an attack upon the -- I'm sure -- upon the credibility of the witness that's already identified them. That's been patent right along. I think I'm entitled to corroborate in this fashion. I intend to expedite, Your Honor --

THE COURT: Do you expect to have any testimony that these didn't come from the store?

MR. BROWN: No.

THE COURT: If there's not going to be any testimony that these came from any other place, what's the reason for this?

MR. GORDON: If the defense is prepared to do that, Your Honor, I would propose then simply to ask Detective